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ANNOTATED DRAFT PRESIDENTIAL ORDER ON ALLOCATION AND LEASING OF LAND IN RWANDA

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EXECUTIVE SUMMARY

This report presents an initial draft Presidential Order on the allocation and leasing of land held by the State, local authorities, public institutions, and parastatals in their private domains (Draft Order) and related commentary. The Draft Order is prepared by the USAID-Rwanda LAND Project at the request of the Rwanda Natural Resources Authority (RNRA) and is prepared under the authority of Law No. 43/2013 of 16/06/2013 Governing Land in Rwanda (2013 Land Law). The Draft Order updates and revises the current Ministerial Order 001/2008 of 01/04/2008 determining the Requirements and Procedures for Land Lease (2008 Order).

In preparing the Draft Order and its annotations, the authors considered Rwanda's legal framework for land and administrative procedure and comparable law of other African and non-African countries. The authors also reviewed Rwanda's Land Use Development Master Plan and related documents and legislation, and secondary materials on land allocations and leasing to support commercial and industrial investment, social welfare, and environmental objectives. The authors prepared the Draft Order to harmonize with other draft legislation reviewed and drafted by the LAND Project. Specifically, the Draft Order harmonizes with the draft Prime Minister Order on the Modalities for Use, Development, and Management of Swamp Land in Rwanda; the draft Ministerial Order determining the Conditions and Modalities for Assignment of Land; and the review of the draft Law governing the Expropriation of Land in the Public Interest.

The proposed Draft Order uses much of the framework of the existing 2008 Order, with some targeted revisions and additions.

1. **Governance structure.** The Draft Order establishes a governance and administrative structure for land allocations and leasing that is based at the central level and takes full advantage of the expertise in the central government bodies. The structure includes roles for the central government bodies with authority for land, investment and development, and the environment, with engagement of other sectors (such as agriculture) as relevant. Land allocations and the terms governing land leases in the private domain of the State and government bodies are two of the primary methods the GOR has to control the use of Rwanda's natural resources. A system that helps ensure effective and efficient control over the decision-making over the use of the GOR's assets appears prudent and appropriate at this stage in the country's development. The Draft Order limits decentralization to selected activities, primarily related to the allocation of land for personal rather than project use.
2. **RNRA working committee.** The Draft Order places the central government body for land in a lead and coordinating role and suggests that the government body create an internal body, such as a working committee, to manage the responsibilities. Such an internal body would be equally useful to the management of assignments of land, conditional and unconditional use swamp land, and land expropriations. A working committee would give the GOR a flexible, specialized governmental body through which officials can:

- Direct land use and development consistent with the National Land Use Development Plan (Land Use Plan) and national objectives;
 - Ensure that decisions on land allocation, leasing, assignment, use of swamp land, and expropriation are: 1) based on the best available information about the status of government and private land across the country and the suitability of different land parcels for different uses; 2) consistent and predictable; and 3) reflect a national perspective and national priorities, while also allowing for consideration of regional and local issues; and
 - Establish a foundation to support successful future decentralization of responsibilities over land.
3. **Rapid, one- and two-step land allocation processes.** The Draft Order uses a quick, one-step process for allocation and leasing land for personal use. The system uses a two-step land allocation and leasing process for project land that allows for rapid, provisional land allocations designed to encourage investment, while creating time to conduct any necessary environmental and social studies and consultations in a meaningful fashion and prior to preparation of business plans and the terms of the emphyteutic lease.
 4. **Objective standards for decision-making.** The Draft Order introduces objective standards and criteria to guide some land allocation and land leasing decisions. As the footnoted comments suggest, in the process of reviewing the draft, RNRA can consider whether to assign the standards and criteria quantitative values, which may make them more useful to decision-making.
 5. **Build GOR and CSO relationships.** The Draft Order introduces some opportunities to create constructive relationships and links between GOR and non-government actors and obtaining input from civil society organizations.

The objectives of the proposed system of land allocation and leasing are multiple:

1. To take advantage of the expertise and capacity within the GOR's central government bodies and to strengthen collaborative and cross-sector decision-making;
2. To help establish an efficient, consistent, and predictable approach to the management of land in the private domain of the State, local authorities, public institutions, and parastatals throughout Rwanda;
3. To manage Rwanda's land in a manner than reflects national as well as regional and local priorities;
4. To help attract investors and meet the needs of the population with rapid land allocations;
5. To allow time for the development of business plans for projects that meet applicable standards of socially and environmentally sound investment; and
6. To establish a system that can be executed by local or specialized land authorities or other government bodies as experience, resources, and capacity grow.

More generally, an overarching goal of the structure of the Draft Order, and the other draft legislation prepared by the LAND Project, is to create a legal framework that supports the vision of Rwanda as a global leader in the management of its land for profitable, productive, and socially- and environmentally-responsible use.

The proposed next steps for RNRA with relation to the Draft Order, and with the support of the LAND Project, as desired, are as follows:

1. Decide the large, overarching issues presented in the Draft Order, including: a) the governance and administrative structure for land allocations and leasing; b) the roles of various government bodies; and c) how the government body will function (e.g., by internal working committee, other governance system)
2. Perform a provision-by provision review of the Draft Order. The review will include making the revisions to implement the decisions made in No.1 and identifying content that should be moved to instructions and procedures.
3. Create the derivative instruments.
4. Develop a proposed set of tools (application forms, contracts, checklists, timelines, etc.) to implement the Draft Order and accompanying instructions and procedures.

1.0 INTRODUCTION

The five-year Rwanda LAND Project seeks to strengthen the resilience of Rwandan citizens, communities, and institutions and their ability to adapt to land-related economic, environmental, and social change. The project has two main components:

1. Increased capacity of local Rwandan institutions to generate high-quality evidence-based research on land related issues and Government of Rwanda (GOR) laws and policies; and
2. Increased understanding of land laws, policies, regulations, and legal judgments on land-related issues by GOR officials, local civil society organizations, research institutes, and citizens.

During the second year of operations, the project's GOR counterpart prioritized reviewing key pieces of land legislation. During a meeting between the project and the Rwanda Natural Resources Authority (RNRA), the parties agreed to divide the activity into two tasks: 1) reviewing land-related draft laws and regulations to address their legal soundness and implications; and 2) drafting new regulations provided for in the 2013 Land Law. The first task is complete. The second task includes drafting the following proposed orders:

1. Presidential Order determining procedures to be followed in land allocation and land leasing;
2. Prime Minister Order determining the list of swamp land, their classification, boundaries, and modalities for use, development, and management for the sustainable benefit of all Rwandans; and
3. Ministerial Order determining the conditions and modalities for assignment of land.

This report is the first in the series, a draft Presidential Order on the allocation and leasing of land held in the private domains of the State, local authorities, public institutions, and parastatals (hereinafter, "in the private domain of the State and other government bodies"). In conducting the work, the authors reviewed:

- Rwandan legal framework for land and administrative procedure, with particular attention to Law No. 43/2013 of 16/06/2013 Governing Land in Rwanda (2013 Land Law) and the Ministerial Order 001/2008 of 01/04/2008 determining the Requirements and Procedures for Land Lease (2008 Order);
- Legislation and strategy and planning documents relating to land use in Rwanda, including the National Land Use Development Master Plan;
- Comparable law and regulations relating to systems of land allocation and leasing in other African countries, including Kenya, South Africa, Mozambique, and Tanzania;
- Comparable law of other non-African countries, including Australia, New Zealand, Thailand, and Germany; and

- Secondary materials regarding systems of land allocation and land leasing, and legislatively-based systems supporting commercial investment in land and land-based programs for poverty alleviation.

The authors also prepared this report and the Draft Order with awareness of the anticipated new ministerial orders governing the assignment of land and use of swamp land, which are the subjects of the second and third drafting assignments listed above. The authors conceived of a single governance and administrative system to implement the processes and procedures detailed in the three proposed orders.¹ As the discussion sets out, the system may also extend to decision-making relating to the expropriation of land in the public interest, which is currently the subject of a draft law.

This report is organized as follows: Section 2.0 provides a brief overview of the objectives and principles governing the review. Section 3.0 gives an overview of the proposed Draft Order. Section 4.0 sets out the proposed Draft Order, with the comments in footnotes. Section 5.0 presents: 1) chart depicting the proposed responsibilities of various central government actors for various activities and options for decentralization of the responsibilities; and 2) a chart indicting the timeline for land allocation and leasing for projects. A brief conclusion follows.

2.0. OBJECTIVES AND PRINCIPLES GOVERNING REVIEW

The purpose of this report, which sets out a proposed Draft Order, is to:

1. Update the content of the 2008 Order based on new legislation, including the 2013 Land Law;
2. Identify areas where the new Order can support GOR policy objectives, including attracting land-based investment and supporting poverty alleviation and other social programs; and
3. Suggest areas for strengthening the overall effectiveness and efficiency of the land allocation and leasing processes through a proposed governance and administrative structure and refinements to terminology.

Legislative drafting, including drafting orders designed to implement laws, is a multi-stage and multi-layered process. This effort is part of the early stages of the design of a refined land allocation and leasing process. The proposed Draft Order and the comments identify some issues in the various procedures that may positively or negatively impact the achievement of national objectives for the use of land in the private domain of the State and other government bodies. Based on our understanding of those issues, the Draft Order proposes one possible governance system to manage allocation, assignment, and leasing of such land.

The draft is, however, only a first step in the process of creating an appropriate, practical, effective, and efficient system. As RNRA reviews and comments on the Draft

¹ As a result, many of the provisions are based a model that is used in all three draft instruments.

Order and the other two draft orders prepared for this project, more issues and options will emerge for consideration. In addition, the authors anticipate that a good percentage of the content of the current draft should be moved to instructions and procedures. The authors look forward to helping ensure that the input of RNRA and other stakeholders, relevant strategic plans, and the country's ongoing experience with its systems of land administration, inform subsequent drafts.

DRAFT

3.0 OVERVIEW OF DRAFT ORDER

Some of the objectives of the system of land allocation and leasing of GOR land are to:

1. Support investment in land by making the process and procedures for project promoters to obtain and retain the necessary land accessible, efficient, and predictable;
2. Improve land access and productive use of land by all Rwandans, especially those who are economically and socially marginalized; and
3. Support land use planning and development of land consistent with principles of economic growth, alleviation of poverty, sustainable land use, and environmental protection.

In support of these objectives, the Draft Order proposes a number of revisions to the framework and content of the 2008 Order. The proposed Draft Order:

1. Clarifies the scope of the Order to focus on allocation and leasing of land in the private domain of the State, local authorities, public institutions, and parastatals;²
2. Separates the process for land allocation from the negotiation and execution of land leases for project land;
3. Introduces proposed criteria to guide land allocation and land lease decisions; and
4. Recognizes the number of government bodies with authority over various aspects of the process of land allocation, project development, and leasing. Under the Draft Order, the central government body for land takes a lead role and is responsible for managing and overseeing the processes of land allocation, assignment, and leasing until such time that the processes can be reliably and efficiently implemented through local or specialized land authorities or other governmental bodies. Central government bodies for investment and development, the environment, and relevant sectors, such as agriculture, have responsibility for selected tasks. The central government body for land is responsible for coordinating the inputs and engagement of the various bodies.

3.1 Terminology used in Draft Order

Emphyteutic lease. The Draft Order uses a broad definition of the term, “emphyteutic leases,” to reflect its actual use in various legal instruments and in common usage. The definitions in 2013 Land Law and the 2008 Order restrict emphyteutic leases to those entered into with the State. However, the term is used more broadly in the legal framework to include leases where the State is not the lessor. The Draft Order attempts to clarify the use of the term by using the common definition of the term: emphyteutic leases are long-term agreements under which the lessee is required to improve or make productive use of the land. In other words, the definition does not restrict the use of the term to leases of State land but includes leases by public institutions, parastatals, and

² As noted in Section 1.0, this report and the Draft Order refer to these entities by the shorthand, “State and other government bodies.” Other possibilities include using the term, “Government,” as in “private Government land.” However, that term may carry unwanted associations. Many countries simply use, “State,” as in “private State land”, but in most cases, the Rwandan legal framework does not define or use the term “State” to include public institutions and parastatals, and in some cases the term does not extend to local authorities. Thus, use of that term would create confusion.

other entities. The broader definition of the term does not adversely impact the application and interpretation of the Draft Order in relation to its authorizing legislation.

The term, “emphyteutic lease,” is also commonly applied to long-term leases. Article 17 of the 2013 Land Law sets a minimum requirement of a three-year term for emphyteutic leases granted by the State. Accordingly, this Draft Order adopts three years as qualifying as “long-term” for purposes of the definition and use of the term. This definition brings all the leases within the category of “emphyteutic leases” and thus avoids creating two categories.

“The appropriate governmental body with authority over [sector].” Because the authority of the various GOR offices and officials continues to evolve, the Draft Order identifies the governmental bodies responsible for various activities as: “the appropriate governmental body with authority over land [or other sector].”

3.2 Proposed governance and administrative system: central-level authority over land allocation and leasing

Land allocations and the terms governing land leases in the private domain of the State and government bodies are two of the primary methods the GOR has to control the use of Rwanda’s natural resources. A system that helps ensure effective and efficient control over the decision-making about the use of the GOR’s assets appears prudent and appropriate at this stage in the country’s development.

The existing legislation governing allocations of land, the 2008 Order, gives each governmental entity that has land in its private domain the authority to select the recipients of allocations of that land and to manage the process of entering into and enforcing the lease. The entities receive technical support for managing the land allocation process from land officials:

An organ which receives an application for land shall be assisted by the following:

- 1° the Ministry in charge of the management of the land referred to, the Ministry administratively supervising the parastatal and the City of Kigali are technically assisted by the national organ in charge of land management and use;*
- 2° the District is technically assisted by the District Land Bureau.*

This system for managing land allocation and leasing requires a high level of local capacity. In addition, even with appropriate capacity, the system does not appear to have an integrated approach for managing land allocations and leasing. As a result, even with the planned technical support (which is also decentralized), the different government bodies are unlikely to handle land allocations and lease negotiations with consistency and predictability. Furthermore, it is unlikely that national objectives and priorities are considered in decision-making in addition to purely regional or local interests. For these reasons, the Draft Order substitutes a centralized governance system, which can be decentralized as experience with the decision-making processes grows and capacity within local and specialized bodies increases.

The sheer number of different government bodies that may exercise some authority over some aspects of the land allocation and leasing process, and the varying levels of capacity in those bodies at this time, suggest the need for a single lead government body. Responsibility for land allocation and leasing can be effectively handled either by an existing governance body or by a new governance body. Stakeholders in Rwanda

voiced a strong preference for using an existing governance body to manage the process.

The central government body with authority over land is the appropriate entity to manage land allocation and leasing. All land in the private domain of the State and other governmental bodies is subject to its authority. Other government bodies, including those government and quasi-governmental bodies that hold the land within their private domains and the central-level bodies responsible for investment and agriculture, have authority over some aspects of the land allocation and leasing process. In contrast, the central body with responsibility for land has overarching authority. Likewise, district, municipal, and local government bodies where the land is located may exercise some authority over the process. However, the local bodies are within the GOR; their authority is devolved or decentralized.

The central government body with responsibility for land can initially directly or indirectly manage the land allocation and leasing procedures. The engagement of the central body will help ensure that GOR land is managed consistently, efficiently, and with a national perspective. As experience grows and more decentralization is possible, the central body's role can evolve into an oversight function.

3.3 Internal working committee

Operationally, the central body might consider creating an internal working committee so that the responsibility for management of the land in the private domain of the State and other government bodies is shared by an identified group.³ Based on discussions with stakeholders, the authors suggest creation of a three- to six-person working committee within RNRA (or any successor body).

Committee members can be selected based on position or specific expertise, with a goal of creating diversity of perspective and sharing work load among different departments, if possible. The authors recommend that decisions of the working committee (and decisions that are shared with other government bodies such as the central government bodies with responsibility for investment and agriculture) be by consensus as opposed to majority rule. Consensus decision-making, especially by small groups, tends to promote discussion, information sharing, and ownership of the decision.⁴ For committee decision-making, stakeholders suggested that the Registrar serve as a final arbiter in the event of impasse.

Principles of efficiency, good management practice, and capacity building would be well served if the working committee's responsibilities also extended to management and oversight of land administration functions related to:

1. Use and development of conditional and unconditional use swamp land;
2. Assignment of land; and
3. Land expropriation.⁵

³ The authors suggest this same governance structure to manage the assignment of land and the use and development of swamp land that is classified as suitable for conditional use and unconditional use.

⁴ See full discussion in relation to Article 28 of the Draft Order.

⁵ Although expropriation is usually focused on private land in addition to land in the private domain of the State and other government bodies, the draft law on land expropriation envisions use of committees to handle various administrative and governance functions. The working committee would be a method of giving the various tasks a single locus, which would be responsible for delegating the tasks, as

The responsibilities of the central government body with authority over land in these three additional areas are quite similar. Creating a single locus for execution of the responsibilities, coordination with other sectors, and oversight within the central government body with responsibility for land would help ensure an organized approach. In addition, the use of a single committee within the body will promote development of deep experience and expertise among committee members and will likely allow for decentralization of some tasks sooner.

Use of a working committee may help streamline the process of selecting land and land developers for projects by ensuring all government stakeholders have access to the same information, facilitating discussion among the stakeholders, and requiring the desired degree of agreement on land use. If the working committee also handles land expropriation, there are additional efficiencies because many aspects of the application processes, forms, and decision-making criteria can be shared. In addition, because the committee will have information about the availability of land in the private domain of the State and other governmental and quasi-governmental bodies when it evaluates the land needs for projects, the committee will be able to help ensure that expropriation of private land is necessary.

In short, a working committee would give the GOR a flexible, specialized governmental body through which officials can:

- Direct land use and development consistent with the National Land Use Development Plan (Land Use Plan) and national objectives;
- Ensure that decisions on land allocation, leasing, assignment, use of swamp land, and expropriation are: 1) based on the best available information about the status of government and private land across the country and the suitability of different land parcels for different uses; 2) consistent and predictable; and 3) reflect a national perspective and national priorities, while also allowing for consideration of regional and local issues; and
- Establish a foundation to support successful decentralization of responsibilities over land.⁶

appropriate. The working committee would also have an oversight function, responsible for ensuring the process from start to finish. For example, in the case of a new highway the Ministry of Infrastructure would form a project committee under its internal procedures. That committee would work with the proposed central land working committee, which would have authority over the land aspects of the project and management of the expropriation. As with the committee's other responsibilities, as experience and capacity develop at local levels, the committee can form local committees, with the central committee serving in an oversight role.

⁶ Similar kinds of committees operate in the African countries of Tanzania (Land Allocation Committee) and Mozambique (Cadastre Services Committee). Elsewhere, Thailand has a National Land Allocation Committee (although it has broader duties and is more akin to a land commission). The proposed internal committee structure also shares features with the State Land Asset Management office in Queensland, Australia. The office handles land allocations, with support from local authorities as necessary and with oversight by the land minister. Department of Natural Resources and Mines, Queensland. 2013. Allocation of Land in Priority in Terms of Land Act 1994. Such a system obviously requires adequate staffing within the designated office. The system also assumes that a single sector office can make decisions impacting many different sectors and interests based on objective criteria, and the other governmental stakeholders will accept the judgment of that office. If an office does not have the capacity and political control of the process, the office will be ineffective.

The authors included a placeholder requirement for an internal governance and administrative body (e.g., working committee) within the central government body with authority for land (Article 6). However, in order to present the most useful draft and retain the GOR's organizational flexibility, the legislation refers throughout to the central body rather than any potential internal governance and administrative body.

3.4 Structure of Draft Order

The Draft Order follows essentially the same structure as the 2008 Order, with some chapters added. The additional chapters introduce the proposed Working Committee, help separate the processes for land allocation from those for land leasing, and provide roadmaps to the content of some sections and articles. The Draft Order also tracks the structure of the draft order on the assignment of land and the draft order on the use and development of swamp land.

Section 4.0 sets out a proposed Draft Order. Footnoted annotations discuss the content of proposed provisions and note options with reference to the legal instruments in other jurisdictions, where available and relevant.

4.0 ANNOTATED DRAFT ORDER

DRAFT PRESIDENTIAL ORDER NO. _____ OF _____ DETERMINING THE REQUIREMENTS AND PROCEDURES FOR LAND ALLOCATION AND LEASING OF LAND

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Given the Constitution of the Republic of Rwanda of June 4th, 2003 as amended to date, especially in its articles 11, 28, 29, 30, 31, 32, 43, 93, 120, 200 and 201;

Given Law No. 43/2013 of 16/06/2013 Governing Land in Rwanda (2013 Land Law) especially in its articles 3, 4, 5, 10, 11, 14 - 18, 23, 25, 27, 32 – 44, 50 – 61, 69 – 70, and 72 -73;

Given the Presidential Order No. 61/01 OF 21/11/2008 modifying and complementing the Presidential Order No. 30/01 of 29/06/2007 determining the exact number of years of land lease;

Given the Presidential Order No. 53/01 of 12/10/2006 determining the structure, the powers and the functioning of the Office of the Registrar of Land Titles especially in its article 8;

Given Ministerial Order No. 003/14 of 14/04/14 determining responsibilities, organization, and functioning of District Land Bureau;

Given Ministerial Order No. 001/14 of 14/04/2014 for Sub-leasing of Agriculture, Livestock, and Forest land; and

Given Ministerial Order No. 01/16.01 of 16/03/2009 Modifying Ministerial Order No. 01/16/00 of 19/09/2001 Modifying Rates for Renting and Selling State Owned Land;

Given Ministerial Order 001/2008 of 01/04/2008 determining the Requirements and Procedures for Land Lease;

[add new legislation on abandonment of land]

After consideration and adoption by the Cabinet, in its meeting of [_____]:

HEREBY ORDERS:

CHAPTER I: GENERAL PROVISIONS

Article 1: Purpose of Order

The purpose of this Order is to provide rules, processes, and procedures for allocation and leasing of land in a manner that supports Government of Rwanda policies for economic growth, poverty alleviation, food security, sustainable use of natural resources, and environmental protection.

Article 2: Scope of Order

This Order sets out the rules, processes, and procedures governing allocations and leases of land in the private domain of the State, local authorities, public institutions, and parastatals.⁷

⁷ Article 2 separates the statement of the subject matter of the Draft Order from its purpose (Article 1). Article 2 limits the order to processes governing the allocation and lease of private land of the State, local authorities, public institutions, and parastatals, which the Draft Order thereafter refers to as, “land within the private domain of the State and other government bodies.” Other leases, such as those for leases of

Article 3: Definitions

The following terms used in this Order are defined:

Administrator:⁸ a person who manages and administers the patrimony of a person who is a minor, mentally incompetent, or a ward of the court. Administrators must be authorized by a competent court or authority recognized by the court.

Business Plan: a written document that sets out a detailed description of the objectives and design for a planned project and the project's anticipated operational, management, and financial structure and forecast.

Emphyteutic lease:⁹ an agreement between a landholder and person that grants the person a long-term right to use a parcel of land as if the person were the landowner, subject to payment of agreed rent and the person's improvement or productive use of the land. Emphyteutic leases have terms of between three (3) and ninety-nine (99) years and may be renewable.

Environmental and social impact assessment (ESIA)¹⁰: an evaluation that identifies effects that may be caused by planned human activities or a project. An Environmental

freehold land held by individuals, are governed by: the 2013 Land Law, the Civil Code, and principles of contract law (both statutory and common law).

⁸The Draft Order retains the term, "Administrator," because it is used in existing legislation. However, the term is quite broad and even when defined, can create ambiguity, especially in derivative instruments. An alternative English term used in this context is, "conservator." Regardless of what term is used, note that the person acting for minors, incompetent persons, or wards of the court must have legal authority to act. The definition in the 2008 Order suggests that authority can be created based solely on the person's actions on behalf of the minor, incompetent, or ward, which should not be acceptable. If authority is based on actions alone, theoretically anyone can become an Administrator. The government body must check to ensure that any purported representative of another's interest in land has the authority to act as the legal agent for that person. The authors understand that the definitions in the 2013 Land Law should govern definitions in all subordinate legislation. However, the issue of how legal authority over land is created is critical enough to warrant an adjustment to the definition. This Draft Order made a proposed adjustment.

⁹ As noted in the text of the report, in the 2013 Land Law, the term, "emphyteutic lease," is identified in the 2008 Order as a lease of State land. The definition is problematic because "State land" is defined and used in various instruments in a manner that does not extend to land owned by parastatals and public institutions. However, under the 2008 Order, parastatals and public institutions are emphyteutic lessors. This kind of confusion of terminology (which is also an issue with other terms and definitions in the legal framework for land) is one reason why standard drafting techniques generally use the common definitions of legal terms in legislation. Otherwise, there is the risk of the situation as occurs in this case: a law with restrictive definitions that often do not reflect the actual use of the term in the legislation yet constrain how the terms can be used in all subsequently drafted derivative legislation. For purposes of this draft, the Draft Order suggests a revision of the term, "emphyteutic lease," so that it uses the common definition of the term and is not restricted to land leased by the State. Under the broader definition (which is also used in the Civil Code and the text of other instruments), emphyteutic leases can be granted by public institutions and parastatals, as envisioned by the 2008 Order. Thus, this proposed definition addresses the current problem with the defined terms in the 2013 Land Law and 2008 Order. However, the issue of the terminology defined in the 2013 Land Law should be formally addressed at some point, such as through amendment to the 2013 Land Law.

¹⁰ The term Environmental and Social Impact Assessment (ESIA) is a revised term for the term, "Environmental Impact Assessment (EIS)," currently in use in Rwanda and referenced in the 2005 Environmental Law. The standard EIS includes a social impact section; the change in title is international best practice and may help to give appropriate attention to the social impact section of the assessment.

and Social Impact Assessment is equivalent to an environmental impact assessment (EIA) that includes the required social impact assessment section.

Land in the private domain of the State and other government bodies: land in the private domain of the State, local authorities, public institutions, and parastatals.

Lessor: a landholder who grants a lease and rents property to another.

Lessee: one who rents property from another.

Local community: a group of individuals who interact within their immediate environment, including sharing natural resources and information, and forming social, economic, and political relationships.

Person: an individual, a registered company, or an association with legal personality.

Personal land: land developed and used for primarily personal and noncommercial use, such as a residence. Personal land may include land used for a small-scale commercial purpose, such as the sale of surplus vegetables or a home-based enterprise such as tailoring or food preparation. Persons applying for land allocations for personal use are “applicants for personal land.”

Project implementer: An individual or group, or a representative of an entity or group, implementing a project. Project implementers include commercial investors, private corporations, public-private partnerships, civil society organizations, individuals, families and other groups, associations, and cooperatives. Project implementers may be the same as project promoters or may be other individuals, entities, or groups.

Project land: non-personal land developed and used for: 1) commercial or industrial enterprises, including agriculture and urbanization; 2) enterprises that are developed to serve social welfare, social justice, or public purposes, including small-scale agricultural uses; or 3) mixed commercial/industrial use and uses designed to serve social welfare, social justice, or public purposes. Project land is distinguished from personal land.

Project promoter: An individual or group, or a representative of an entity or group planning a project who facilitates or leads the development, organization, and implementation of the project. Project promoters include commercial investors, private corporations, public-private partnerships, civil society organizations, individuals, families and other groups, associations, and cooperatives.

Public purpose:¹¹ an objective that shall affect inhabitants as a community, group, or national population and not merely as individuals. Public purposes include the promotion of general welfare, prosperity, public health, security, environmental protection, and other objectives in the interest of the public.

Registrar: the Registrar of Land Titles or Deputy Registrar of Land Titles.

For further discussion of the issue of retitling the EIS, please see the discussion in USAID-Rwanda LAND Project's Draft Prime Minister Order on the Modalities for the Use, Development, and Management of Swamp Land in Rwanda.

¹¹ The section added the term, “public purpose,” which is used in other legislation (such as the draft Expropriation Law) but is undefined in that legislation. The definition suggested is broad in scope.

Sustainable use: use of components of biological diversity in a way and at a rate that maintains its potential to meet the needs and aspirations of present and future generations and does not lead to the long-term decline of biological diversity.

CHAPTER II: GOVERNANCE STRUCTURE

Article 4: Management of land allocation and leasing by central land authority¹²

The central government body with authority over land has primary responsibility for managing the allocation and leasing of the land in the private domain of the State and other government bodies.

In exercising its authority, the central governing body for land shall recognize the authority of the following governmental bodies within the areas of their competencies and mandates:

1. The central government body responsible for promotion of investment and development;
2. The central government body with authority over the environment;
3. The central government body with authority for agriculture; and
4. Any other central government body with authority relating to the planned sustainable use and development of land within the private domain of the State and other government bodies.¹³

The central governing body with authority over land shall serve as the lead government body and coordinate the activities and inputs of the various governing bodies. All governing bodies must cooperate with each other in the exercise of their authority and responsibilities under this Order.

As contemplated by Law No. 43/2013 of 16/06/2013 governing Land in Rwanda, a government body may, in its discretion, delegate and devolve tasks related to the allocation and leasing of land under this Order to authorized competent government bodies, including other governmental and quasi-governmental entities and local government bodies.

Article 5: Responsibilities of the land authority regarding land allocations and leasing¹⁴

¹² Activating the central government body for land's authority over land allocation and land leasing is likely to create concern for those governmental and quasi-governmental bodies who hold the subject land in their private domains. The current 2008 Order grants those bodies the decision-making authority over the allocation of that land. That decentralized system of land allocation became operational before there were standards and procedures in place to assure that the decisions these government and quasi-governmental bodies made were consistent with GOR objectives and best practices for land administration. Thus, the various government bodies faced the challenges posed by competing principles governing land use and sophisticated investors pitching lucrative opportunities without an adequate institutional structure. Even with such a structure, a decentralized system requires a high-level of capacity, commitment, and oversight to ensure processes and procedures are implemented. Even at central levels, determining what percentage of land should be developed for various kinds of enterprises, how to manage competing national and regional objectives, and how to select project promoters who are likely to fulfill their obligations is quite challenging. The more centralized system proposed in the Draft Order is designed to give the government body a chance to develop and implement a process designed to meet GOR objectives and build experience and capacity in central and decentralized offices alike—with the ultimate goal to decentralize more functions in the future.

¹³ Examples of other possible bodies are the current MININFRA and MINALOC.

In coordination with other relevant government bodies as provided in this Order, the governing body with authority for land shall:

1. Promote the allocation and leasing of land in a manner that is consistent with nationally recognized land use classifications and Government of Rwanda policies and priorities;
2. Maintain an inventory of land available for allocation and leasing;
3. Classify all inventoried land as: a) personal land; or b) project land;¹⁵
4. Identify the relevant government bodies with authority related to the proposed land allocation and coordinate their involvement in the process of land allocation and leasing;¹⁶
5. Determine the appropriate process for each land allocation;¹⁷
6. Have primary management responsibility for land allocations and leasing for personal land;
7. Manage public notification and application process for personal land;
8. Assist in linking applicants for personal land with suitable, available land;
9. Conduct review and decision-making on applications for personal land;¹⁸
10. Oversee public notification and application process for project land and facilitate applications of individuals and groups for project land;¹⁹
11. Conduct review and provide input into decision-making on initial screening of applications for project land;²⁰

¹⁴ This article is the list of responsibilities; specifics regarding the responsibilities are contained in subsequent articles.

¹⁵ Under the system proposed for administering land allocations, it will be essential for the government body with authority over land to control the classification of available land as land for personal use, projects, or both. Those decisions are one critical means by which the government body can help ensure that the GOR's priorities for land use are factored into decision-making. Once the classification is made, the process of giving notice of the allocation opportunity, soliciting applications, and facilitating applications will either be handled by the government body for land for personal land (possibly delegated to district land offices) and by the body responsible for investment and development for project land. Note that the definition of project land includes land that has mixed project and personal uses.

¹⁶ These bodies will likely include the government body with authority for investment and development (all project land allocations); the body with authority over the environment (project land allocation where there is potential for environmental and social impacts), decentralized authority, such as district land offices (delegated responsibilities for applications for personal land and applications for project land by individuals, groups, etc.); and body with authority over agriculture (project land allocated for agricultural uses).

¹⁷ This task may be done by the government entities responsible for the application process; however, because the methods include an uncompetitive allocation in some circumstances, at least initially, the engagement of the central body in these decision will help ensure that the decisions as to method are well-considered and unbiased. After the central body has some experience with the decision-making, it can assist other bodies in conducting appropriate decision-making and can thereafter delegate responsibility for the task.

¹⁸ The Draft Order contemplates the body with authority for investment and development leading the process for project promoters seeking project land. The government body with authority over land will lead or oversee the application process for persons seeking land for personal use, with the possibility of the District Land Offices handling the process, to the extent that they have capacity.

¹⁹ Ideally, the government body with authority for investment should facilitate the application process for all project promoters. However, it is unclear whether the government body with authority for investment (currently RDB) is accessible to CSOs, local groups, individuals, and families who seek land for a project. If the government body with authority for land holds joint responsibility with the government body with authority for investment for assisting applicants, it can delegate the responsibility to local authorities, who are potentially more accessible to all such potential land users.

12. Conduct review and decision-making on Environmental and Social Impact Assessments and any subordinate studies or agreements required for use of project land;²¹
13. Conduct review and decision-making on Business Plans for project land;²²
14. Negotiate, draft, and execute a emphyteutic leases;
15. Enforce the terms of emphyteutic leases; and
16. Perform other tasks consistent with the authority and competencies of the government body with authority over land and the principles governing the productive and sustainable use of land.

Article 6: Internal governance and administrative body

The central government body with authority for land shall establish an internal working committee or other internal administrative and governance body to manage and oversee the processes for allocation and leasing of land within the private domain of the State and other government bodies.²³

The selection of members of the central government body for land, decision-making processes, and record-keeping shall be established by internal procedures.

Article 7: Responsibilities of investment authority with regard to land allocations and leasing²⁴

In coordination with relevant governing authorities as provided for in this Order, the central governing body with responsibility for promoting investment and development shall:

1. Promote the availability of Government of Rwanda land to prospective project promoters and actively manage Rwanda's reputation for productive investment in land;
2. Promote the preparation of development models for different types of land and land uses and make them available to project promoters;²⁵

²⁰ The engagement on the body with authority for land with this process is necessary if the body administers applications for groups and individuals seeking project land. In addition, the body's engagement provides a check to ensure that the new notification and due diligence responsibilities that will be undertaken by the authority for investment are performed and all qualified project promoters are considered. This check may prove to be unnecessary in practice and especially over time but, in an abundance of caution, is included in this Draft Order.

²¹ This task will be led by the central body with authority for the environment, which will also have decision-making authority.

²² This task will be led by either the central body with authority for land or the central body with authority for investment and development, both of which have decision-making authority over this task. The central body with authority for the environment also has decision-making authority over this task because the Business Plan will include the project plan with respect to any environmental and social issues.

²³ The authors recommend creation of a working committee within the central body with authority for land to manage land allocation and leasing, the assignment of land, issuance of use agreements for swamp land, and, if practical, land expropriation. The report discusses the suggested internal governance body more thoroughly in Section 2. For purposes of the Draft Order, the provisions refer to authority and responsibility of the central body for land in order to maintain flexibility for the body in how it wishes to organize the administrative and governance functions internally.

²⁴ As noted above, the Draft Order suggests that the authority for investment take responsibility for assisting project promoters seeking land for project uses, while the authority for land (possibly through the district land offices) takes responsibility for facilitating allocations of personal land.

3. Assist project promoters through the process of applying for land allocations;²⁶
4. Review and decision-making on applications of project promoters for project land;
5. Review and provide input into the decision-making on any required Environmental and Social Impact Assessments and other required studies and agreements;
6. Review and decision-making on Business Plans submitted by project promoters;
7. Provide input into terms of emphyteutic leases; and
8. Manage the Government of Rwanda's global reputation for investment in land in the private domain of the State and other government bodies.

Article 8: Responsibilities of environmental authority with regard to land allocations and leasing

In coordination with other relevant governing bodies, the central governing body with responsibility for the environment shall:

1. Evaluate applications for proposed projects for any required Environmental and Social Impact Assessments or permits;
2. Advise the central government body for land, the body for investment and development, and project promoters of any Environmental and Social Impact Assessment or permit requirements within three (3) business days of the submission of the project promoter's application.
3. If an Environmental and Social Impact Assessment is required:
 - a. In its discretion, the government body for the environment shall conduct the process of selecting the Environmental and Social Impact Assessment provider;
 - b. Approve or disapprove of selection of the Environmental and Social Impact Assessment provider;
 - c. Facilitate Environmental and Social Impact Assessment provider's work;
 - d. Facilitate public comment on the draft Environmental and Social Impact Assessment; and
 - e. Conduct review and decision-making on the Environmental and Social Impact Assessment and any subordinate studies or agreements;
4. If the project requires a permit within the scope of authority of the central body with responsibility for the environment:
 - a. Set requirements for the permit; and

²⁵ In its 2011 report on global investment in land, the World Bank recommends that countries create model development plans that can be used in conjunction with various types of land and consistent with different land use plans. Model development plans help communicate a country's broad vision to prospective investors and assist investors with a template they can tailor to their proposed project. The World Bank. 2011. Rising Global Interest in Farmland. Washington DC: The World Bank.

²⁶ Ideally, RDB (or successor entity) will provide accessible support for sophisticated actors and potentially less sophisticated actors alike. As noted above, the Draft Order assigns the government body with authority for land a role in facilitating the engagement of local groups to ensure the less sophisticated applicants have meaningful opportunities to obtain project land, consistent with GOR policy. Other options include developing an institutional framework for dedicated support within RDB/successor body or the government body with authority for land, or linking with local authorities or another governmental or nongovernmental body that is oriented toward supporting local groups and individuals and can provide local access.

- b. Issue or deny the permit;
5. Conduct review and decision-making on Business Plans for projects with environmental or social impacts or environmental permits;
6. Provide input into the terms of the emphyteutic lease; and
7. Monitor compliance with the environmental and social components of the emphyteutic lease, Environmental and Social Impact Assessment, and any permits; and
8. Provide any reporting on the environmental and social impact of a project as required by this Order.

Article 9: Responsibilities of other central authorities with regard to land allocations and leasing

In coordination with relevant governing bodies, other central governing bodies with authority over the development and use of land in the private domain of the State and other government bodies shall engage in review and decision-making and provide input and technical support related to tasks within their authority and competencies.²⁷

The government body with authority over land shall be responsible to identify relevant central government bodies and coordinate their engagement in the process of land allocation and leasing.

Article 10: Delegation of responsibilities to other government bodies and entities

Any central governing body with responsibility for the performance or management of tasks relating to the allocation and leasing of land under this Order may delegate the following tasks to any competent government body or quasi-governmental body, consistent with the scope of its mandate and capacity:

1. Maintain the inventory of land for allocation and leasing;
2. Identify suitable land for personal use and projects;
3. Assist applicants for personal land²⁸ and project promoters²⁹ through the process of applying for land allocations;
4. Review of applications for personal land and project promoters and provide input into decisions on applications;³⁰
5. Conduct public auctions for land allocations;
6. Facilitate preparation of Environmental and Social Impact Assessments and related studies and agreements;

²⁷ Other government bodies might include those currently identified as MINAGRI, MININFRA, and MINALOC, depending upon the issues presented by a particular project.

²⁸ For example, the central government body with authority for land may delegate responsibility for assisting applicants for allocation of personal land with the application process to District Land Offices with sufficient capacity.

²⁹ According to stakeholders, RDB currently handles these applications from its central location. A process that continues to retain central control over the application process for project promoters is ideal; the process for project applications is more involved than the process for allocations of land for personal use. However, this article does permit delegation of the task of assisting project promoters with applications to decentralized or specialized government bodies with sufficient capacity.

³⁰ The authors suggest that decentralized bodies have input into the decision, as appropriate, but not decision-making authority.

7. Facilitate community consultations and public meetings;
8. Review of Business Plans and provide input into decisions on Business Plans;
9. Manage requests for changes in land use; and
10. Monitor compliance with the emphyteutic lease, Environmental and Social Impact Assessment, and any permits.

A central governing body with responsibilities for the management of allocation and leasing of land under this Order may assign and delegate the following tasks to a competent civil society organization or other nongovernmental entity:

1. Facilitate preparation of Environmental and Social Impact Assessments and any related studies and agreements;
2. Provide input into Environmental and Social Impact Assessments and any related studies and agreements;
3. Conduct Environmental and Social Impact Assessments and any related studies;
4. Facilitate community consultations and public meetings; and
5. Monitor compliance with Environmental and Social Impact Assessments and any permits.

The central government body assigning and delegating responsibilities shall be responsible for overseeing the performance of the delegate and the results.

Article 11: Civil society input into land allocation process³¹

The central government body with authority for land shall encourage civil society organizations to organize themselves to provide constructive, advisory input to the central government body for land on how land allocation and leasing can further Government of Rwanda objectives on:

1. Poverty alleviation and small-medium enterprise (SME) development;
2. Improving rights and livelihoods of women and marginalized groups;
3. Environmental protection and sustainable land use;
4. Food security and agricultural development; and
5. Housing and urban development.

The central government body for land shall meet with a civil society organization committee convened pursuant to this provision at least semi-annually to obtain the committee's input on these topics with relation to land allocation and leasing of land in the private domain of the State and other government bodies.

CHAPTER III: TECHNICAL CATEGORIES AND TOOLS

Article 12: Categories of land use

For purposes of land allocations and leasing, the following land use categories shall be used:

1. Residential, including *umudugudu*, community, cultural, and social uses;
2. Light industry
3. Medium industry

³¹ This article suggests a method for obtaining input from civil society organizations in a controlled and constructive fashion.

4. Heavy industry
5. Commercial
6. Agriculture
7. Livestock
8. Forestry
9. Environmental and biodiversity protection
10. Tourism
11. Mining
12. Infrastructure, including energy, transportation, water and sanitation, and communications
13. Public administration

Article 13: Categories of land development³²

For purposes of land allocations and leasing, the following categories of land development shall be used:

1. **Type 1:** Personal, primarily non-commercial development by individual and family members, such as for residence, subsistence agriculture, and related personal activities.
2. **Type 2:** Partial or small-scale commercial or industrial development, such as space developed for a small shop, cultivation of crops for sale, or small space for energy or transportation infrastructure.
3. **Type 3:** Medium-scale commercial or industrial development. This category includes development for commercial agriculture, manufacturing, commercial enterprises, mining, and urbanization. Commercial development includes development of medium-scale systems operated as cooperatives, by associations, and models based on individual contracts, such as nucleus estate farming.
4. **Type 4:** Large-scale commercial or industrial development. This category includes development for commercial agriculture, manufacturing, and urbanization. Commercial development includes development of large-scale systems operated as cooperatives, by associations, and models based on individual contract, such as nucleus estate farming.

³² This procedure of categorizing types and levels of development may already be part of RNRA's procedures and can help speed the process of land allocation. The process of identifying the private land of the State and other government bodies by appropriate types/levels of development can help prospective investors review options and help the RNRA identify areas by development option. In South Africa, for example, the 2013 State Land Lease and Disposal Policy identifies four categories of farmers for land allocations. The categories range from subsistence farmers to large agri-businesses and the policy notes that it assumes that a percentage of farmers will move within the categories, hopefully progressing up the chain to engaging in more commercial operations, if they wish. The policy recognizes a feature suggested for Rwanda—that there are numerous possible systems for large-scale commercial agriculture, including those that are based on production by local farmers in some kind of large-scale system, such as a nucleus estate. Department of Rural Development and Land Reform, Republic of South Africa. 2013. *State Land Lease and Disposal Policy*. Pretoria: Ministry of Agriculture and Land Affairs. At the next stage of drafting, if RNRA is interested in using this kind of system for categorizing land, definitions for “small-scale,” “medium-scale,” and “large-scale” should be included. The Order may assign suggested percentages to each of the categories in order to guide development decisions. However, such an exercise would impact numerous interests and stakeholders and should be the result of consultation.

5. **Type 5:** Development to support public purposes³³ or in support of established social welfare and social justice objectives that is not within the categories above.

Article 14: Land inventory³⁴

The central governmental body with authority over land shall maintain an electronic inventory of the private land held by the State, local authorities, public institutions, and parastatals that is available for allocation.

For each parcel of land in the inventory that is available for allocation, the land description shall include:

1. All suitable land uses;
2. All suitable levels of development; and
3. Whether the land is suitable for personal use, project use, or both.³⁵

Information on all possible and suitable land uses and levels of land development shall be taken from:

1. The National Land Use Plan and any regional, local, and sector plans created consistent with national Land Use Plan;
2. Any existing environmental and social impact assessments (ESIAs) and other studies;
3. Any reliable and relevant information regarding relating to security issues; and
4. Any other information deemed by the central government body for land to be relevant to its assessment of land uses and development.³⁶

³³ “Public purpose” is defined in Article 3 (Definitions) as: an objective that shall affect inhabitants as a community, group, or national population and not merely as individuals. Public purposes include the promotion of general welfare, prosperity, public health, security, and environmental protection.

³⁴ The electronic inventory of the private land of the State, local authorities, public institutions, and parastatals suggested in this section may already be developed as part of Rwanda’s land information system. The system envisioned in the Draft Order is centrally managed to ensure accuracy of the information and to maintain a central source of information about the use of the private land of the State, local authorities, public institutions, and parastatals throughout Rwanda. African development experts support the development and maintenance of such inventories as a tool to help countries promote programs for access to land for marginalized people and well-designed land-based investment projects. Frank Byamugisha. 2013. *Securing Africa’s Land for Shared Prosperity: A Program to Scale Land Reforms and investment*. Washington DC: The World Bank.

³⁵ The definition of “project use” includes mixed uses. However, for purposes of classification for the inventory, each parcel should be classified as suitable for personal use, project use, or both.

³⁶ This is an area that requires careful consideration for how best to create a relatively efficient system for classifying land that is available for allocation of land for particular development and uses. As the list of sources of information in the article indicates, while official land use plans are essential to the analysis, they should not be the only source of information. The central government body should also consider information from environmental studies in the area, experience with other projects as that experience develops, and other types of considerations, such as security. The process should, in other words, be more a matter of judgment than the mechanical application of land use plans. The consequences of superimposing a plan for investment and development on land without some degree of targeted analysis can be significant. Botswana promoted a government program that allocated land to investors that, in many cases, was unsuitable for the planned development of commercial cattle ranches. The result was, in the opinion of many observers, a failed investment program, significant environmental damage, and increased income disparity between elites and communal agriculturalists. Peters, Pauline. 1994. *Dividing the Commons: Politics, Policy, and Culture in Botswana*. Charlottesville: University of Virginia Press; Cullis, Adrian and Cathy Watson. 2005. *Winner and Losers: Privatizing the commons in Botswana*.

The central government body with authority over land may delegate the responsibility for creating and maintaining the inventory to an internal body within the central government body for land, or to another suitable specialized governmental body.

District Land Bureaus and other decentralized bodies with authority over land shall provide monthly reports³⁷ to the central government body on the status of the private land held by the State and other government bodies within their jurisdiction. The report shall include:

1. Identification of the land by location and boundaries;
2. Current land uses; and
3. Tenure status of the land.³⁸

Other governmental bodies, including those that have holdings that include private land, may also identify available land.³⁹

*[Possible statement regarding public access to the inventory]*⁴⁰

London: IIED. Suitability of land uses should be presumed to be an evolving standard and assessment should be conducted on a case by case basis. Critical to any system will be an efficient method to correct any errors as more and different information about suitable land uses and levels of development becomes available.

³⁷ The Draft Order suggests that decentralized land offices, such as district land bureaus, provide regular input as to the status of land into the inventory system. In making this proposal, the authors are aware that the 2013 Land Law requires annual reports from sector authorities to District authorities, and then to the central body responsible for land regarding the productive use of land (Article 51). The Draft Order suggests much more frequent reports (ideally, monthly). Updated information is essential to ensuring that land is under productive use and identified as soon as it becomes vacant or otherwise available for development and use. If land is not under productive use, the sooner the information reaches the authorities, the sooner the land will be processed for allocation or assignment, if appropriate, and the sooner it will be under productive use again. In addition, a systematic effort to keep the inventory updated will help prevent the possibility of local interests and biases impacting the identification of available land. In setting a more frequent reporting period, the authors assume that the actual effort required to maintain and update the inventory system once all the relevant land parcels are entered is manageable; investigations of land uses can often occur in the course of other work or regular rounds by local authorities, and most updates will simply note “no change.” In addition, in some areas, members of the public are often sources of information about changes in land status, alerting officials of the need to conduct an in-person investigation. However, if human resources are limited and conditions for travel difficult, quarterly reports from the field may be acceptable.

³⁸ These reports will also be used for assessing the productivity of land and potential need for requisition and assignment and to identify potentially abandoned land.

³⁹ In general, local land bureaus and governmental bodies with private land will be in the best position to know when the land is or will become available for allocation. The authors considered a provision that permitted individuals to identify land because, even in a land-scarce country with mandatory registration, there may be areas where GOR knowledge of the land is limited. Local people, especially those seeking land for productive use, may be some of the best sources for identifying available land. However, the authors did not include the provision because of concern over fueling land conflict in circumstances where one group might occupy land and another group might identify the land for possible allocation.

⁴⁰ Public access to the inventory should be considered in relation to Rwanda’s overall policies regarding public access to information. Public access to the inventory may help make Rwanda even more investor-friendly by allowing prospective investors to review opportunities and future opportunities (identifying expiring leases, for example) for land-based investments. Similarly, public information can assist local communities and their supporters by giving them access to information that might assist them in negotiating with investors and designing community-based projects. Public access to information also supports the transparency of the process and reduces opportunities for error, corruption, and private deal-making. Risks include the possibility of disseminating erroneous information, bringing attention to local areas where local offices may lack capacity to manage the information, resulting in backroom deals with unscrupulous investors or land encroachment by groups. Information about land availability may also

CHAPTER IV: ALLOCATION OF LAND

Section One: Land Allocation Process⁴¹

Article 15: Overview of land allocation process

The central government body with authority for land shall oversee and manage the land allocation process. Other government bodies shall have responsibility for certain tasks in the process of land allocation, as set forth in this Order.

The process for land allocation may begin with:

1. The government bodies with responsibility for land allocation identifying land available for allocation and soliciting applications; or
2. An applicant for personal land or a project promoter approaching a government body to apply for a land allocation.

The process of land allocation shall follow the following steps, which are undertaken by the central government body for land and other government bodies, as provided in this Order:

1. Identify land available for allocation from the land inventory or based on land identification by the applicant or project promoter.
2. Confirm the suitability of the identified land based on the planned personal or project use.
3. In coordination with other government bodies, identify any special conditions that require studies or technical support related to use of the identified land.
4. Determine the method of selection of the recipient for the land allocation:

cause alarm and self-protective actions in local communities that are not well-advised as to their rights. However, the potentially disruptive responses of a poorly-advised public is also an incentive to spur appropriate government notifications and action.

In the absence of existing standards governing a land inventory, RNRA might consider initially having some limitations on access (such as providing supervised access for those with legitimate and verifiable interests, as with access to the Land Register). Under such a plan, local communities would be assumed to have a legitimate interest in the inventory, as would NGOs and other organizations supporting the interests of local communities, environmental interests, and other social, environmental, and related interests. Access would potentially be denied individuals and entities known for having interests contrary to national objectives, such as land speculators and traffickers in forest products and wildlife. However, if there is a reasonable risk that some form of restricted access may be subject to abuse, such as prohibiting access by journalists or local communities, the country is best served by creating and maintaining a system of open access to the inventory from its initiation and handling bad actors if they take advantage.

⁴¹ The proposed Draft Order uses a one-step process for the land allocation and lease execution for personal land, and a two-step process that separates the land allocation from the negotiation and execution of the lease for project land. The two-step process allows for: 1) rapid selection of the recipient of the land allocation; and 2) a longer process for the selected recipient: to obtain any studies and technical information, if necessary; engage in consultations and negotiations with local communities, as relevant; prepare the Business Plan; and negotiate the lease terms with the government. The proposed two-step process may help: 1) attract a wide range of potential investors by limiting significant costs of preparing detailed business plans to successful applicants of land allocations; 2) encourage serious investors with a rapid selection process for land allocation; and 3) support high quality projects by allowing the time necessary for preparation of project requirements, such as an ESIA. Investors may be more likely to devote the necessary time to these more resource-intensive parts of the project design if they know they have been selected for the land allocation and their investment of time and money is, therefore, well-placed.

- a. allocation without competition;
 - b. public auction; or
 - c. deliberation and decision by central government body for land.
5. In the event that the applicant for personal land or project promoter will be selected and the land will be allocated without competition, the central government body for land shall proceed to negotiate the emphyteutic lease with the applicant or project promoter (Chapter V).
6. In the event that the applicant for personal land or project promoter will be selected by a competitive process (public auction or deliberation and decision by the central government body for land), publish public notice of land available for allocation and solicit applications.⁴²
7. Collect applications.
8. In collaboration with other government bodies with responsibility to review and decide on applications, conduct initial review of applications and select qualified applicants for personal land and projects.⁴³
9. Implement method of selection (public auction or deliberation and decision by central government body for land).
10. Conduct public auction or deliberation and decision-making to select applicant for personal land or project.
11. Notify applicants and project promoters of results.
12. Enter into emphyteutic lease with successful applicant of personal land (Chapter V).
13. Authorize provisional land allocation for successful project promoter and proceed to requirements for preparation of Business Plan and emphyteutic lease.
14. Issue public notification of land allocation.

Article 16: Public notice of planned land allocation⁴⁴

⁴² See Article 16. Note that at this stage, the available land will have been identified as suitable for personal use, project use, or both. In almost all cases, the land will fall in one of the first two categories: land suitable for projects will almost always be of a size or have other qualities that will make it unsuitable for personal use. For example, a large parcel of land might be suitable for both residential and commercial use but because of its size, a residential development would be classified as a project. Based on whether the land is judged suitable for personal use or project use, the notice of land allocation will either seek individual/family applicants or project promoters. However, the government body with authority for land should also identify land that is well-suited for mixed uses, such as commercial land that may include a residence and space for small-scale income producing activities for a caretaker.

⁴³ This is the “first cut” process in which applications are reviewed for the basic requirements and qualified applicants and project promoters proceed to the public auction or deliberation and decision by the central government body for land. Article 10 allows for the delegation of responsibility for processing applications and conducting a public auction to decentralized bodies, such as district land offices. At least initially, if any tasks are delegated, they should probably be those relating to the allocation of land for personal use. In addition to the possibility of delegation of duties, administrative staff may support the central government body for land. For example, administrative staff can: 1) ensure all parts of the application are complete; 2) research the experience and reputation of the applicant, if necessary; 3) gather any other information necessary for the central government body for land’s selection process; and 4) handle notification requirements. The process contemplates some degree of engagement by the central government body for land either in selecting the applicants for participation in a public auction or bidding process, or for deliberation and decision by the central government body for land based on criteria set forth in the Order.

⁴⁴ Public notice of the availability of land for allocation and procedures for applications must be required. As noted in the comments above, the greater the public access to the details of government land allocations, the greater the protections against allocations granted outside the procedures. Public notice can also assist the GOR by including the public in monitoring land use and development. In several countries, public notice requirements have evolved into public watchdog systems that have helped government departments with limited resources to monitor projects effectively. See, e.g., USAID. 2012. Civil Society in

The central government body for land shall publish a notice of the proposed land allocation in accordance with the notice procedures set out in this Order in Chapter XI. The publication shall:

1. Identify the land available for allocation;
2. Identify all the appropriate land uses and development categories for the available land, using the categories referenced in this Order;
3. Identify whether the land shall be allocated for personal use, project use, or both;
4. For project land, identify any supporting information that will be required for issuance of an emphyteutic lease, such as an Environmental and Social Impact Assessment; whether any required studies have already been prepared; and, if not, which party shall be responsible to their preparation in advance of the lease negotiations;
5. For project land, state that community consultations may be required for issuance of an emphyteutic lease in cases where potential social impacts of land use and development are apparent;
6. Identify the selection process that will be used (public auction or committee deliberation and decision-making); and
7. State the timeline for submission of applications⁴⁵ and land allocation.

Section Two: Applications for Land Allocation

Article 17: Applicants for land allocations

Any person can apply for an allocation of land in the private domain of the State and other government bodies.⁴⁶

Article 18: Application for personal land

Applicants for personal land shall complete and submit an application for an allocation of personal land in the form provided in Annex 1 to this Order. The application shall include:

1. Proof of identification of the applicant, which shall be provided as follows:
 - a. Individuals, whether applying individually or as a group of individuals, shall provide evidence of national identity and passport photos.
 - b. If an applicant is an individual and married under a regime of community of property or limited community of acquests, the application must be joint with the spouse and identification provided for both individuals.
2. The location of the land applied for by district, sector, and cell.
3. The size and type of land applied for.
4. Description of the planned land use.
5. Statement of any other land held by the applicant, including the land's location, use, and tenure status.

Bangladesh. Washington DC: USAID; USAID-Norocc0. 2014. Democracy and Governance program. Washington DC: USAID.

⁴⁵ A proposed timeline for submission of applications will depend on what information is available to the applicants. However, an application period of 20 - 30 days is reasonable in most circumstances. This period will not be included in the time needed to process applications and grant land allocations.

⁴⁶ This article reflects the lack of any limitation on foreigners obtaining land allocations.

6. Any required fee.

Article 19: Application for project land⁴⁷

Project promoters shall complete and submit an application for project land in the form provided in Annex 2 to this Order. The application shall include:

1. Proof of identification of the project promoter, which shall be provided as follows:
 - a. Individuals, whether applying individually or as a group of individuals, shall provide evidence of national identity and passport photos.
 - b. If an individual and married under a regime of community of property or limited community of acquests, the application must be joint with the spouse and identification provided for both individuals.
 - c. If the project promoter is a corporate entity, association, cooperative or other legal entity, or the applicant represents such an entity, identification must include proof of the entity's registration as a legal person.
2. The location of the land applied for by district, sector, and cell.
3. The size and type of land applied for.
4. A description of the planned land use or project, including a brief statement of project objectives and planned outputs.
5. The project promoter's plan to obtain any required studies and technical information, such as an Environmental and Social Impact Assessment.
6. The project promoter's plan for consultation with the local community, if required.
7. The timeframe for the project.
8. The anticipated financial structure for the project.
9. The qualifications of the project promoter and project implementers, including references from other comparable projects.
10. A list of comparable projects implemented by the project promoter.
11. The project promoter's financial status.
12. Statement of any other land held by the project promoter, including the land's location, use, and tenure status.
13. Any required fee.

Article 20: Submission of applications for personal land and incomplete applications

Applicants for personal land shall submit applications for allocations of land to:

1. The central government body for land; or
2. Designated specialized or decentralized government bodies.⁴⁸

⁴⁷ The application form for project land is comprehensive because the more information that is required from applicants in their initial application, the faster and more efficient the process for consideration can be. Experienced investors are familiar with the process and usually have the necessary information immediately available.

⁴⁸ The 2008 Order states that applicants shall submit applications for land allocations to the authority responsible for managing the land requested. So, for example, if an applicant seeks land managed by a parastatal, the applicant submits the application to the parastatal. As noted in the comments above, it may be useful for the process of decision-making on land allocations to be centralized, at least initially. For that reason, the Draft Order suggests that while applications may be submitted to decentralized and other governmental bodies, the processing will be done by the central body for land, ideally through an internal governance and administration body whose function it is to make decisions on land allocations (such as a working committee).

Any designated specialized or decentralized government body receiving applications for land allocations under this Order shall forward completed applications within two (2) working days of receipt to the central government body for land.

All applications must be complete before they will be considered. The government body receiving applications is responsible for reviewing applications for completeness. The government body shall refuse any incomplete applications and shall advise the person submitting the application of the information that must be provided to complete the application.

Article 21: Submission of applications for project use land and incomplete applications

Project promoters shall submit applications for project use land to:

1. The central government body with authority for investment and development;
2. The central government body with authority for land;⁴⁹ or
3. Designated specialized or decentralized government bodies.⁵⁰

Any other designated specialized or decentralized government body receiving applications for land allocations under this Order shall forward completed applications within two (2) working days of receipt to the central government body for land or other designated body within the central government body with authority for land.

All applications must be complete before they will be considered. The government body receiving applications is responsible for reviewing applications for completeness. The government body shall refuse any incomplete applications and shall advise the person submitting the application of the information that must be provided to complete the application.

Section Three: Processing and Selecting Applications for Land Allocation

Article 22: Methods of selection

The options for the method for selection of applicants of personal land and project promoters for land allocations are:

1. A non-competitive allocation;
2. A competitive public auction that is open to project promoters who have submitted acceptable applications; and
3. A competitive deliberation and decision-making process conducted by the central government body for land.

Article 23: Non-competitive allocation⁵¹

⁴⁹ As noted previously, ideally all applications by project promoters should be submitted to the body for investment and development as opposed to land. However, it is unknown whether the investment body is accessible to less sophisticated groups seeking land for projects, and, accordingly, the Draft Order assigns the government body for land a role in facilitating and collecting those applications.

⁵⁰ The 2008 Order states that applicants shall submit applications for land allocations to the authority responsible for managing the land requested. So, for example, if an applicant seeks land managed by a parastatal, the applicant submits the application to the parastatal. As noted in the comments above, it may be useful for the process of decision-making on land allocations to be centralized, at least initially. For that reason, the Draft Order suggests that while applications may be submitted to decentralized and other governmental bodies, the processing will be done by the central government bodies.

Noncompetitive land allocations shall be the exception and only available in the discretion of the central government body for land and when the required criteria below are met.

The central government body for land may elect to allocate well-defined land to an applicant without a competitive process in one of the following three circumstances:

1. There is a single qualified applicant for the land allocation; and:
 - a. The central government body for land verifies that established procedures for the notice and application for the land allocation were followed; and
 - b. The central government body for land determines that there was reasonable opportunity for others to apply; or
2. The land available for allocation is adjacent to land on which there is significant development; and:
 - a. The adjacent landholder applies for allocation of the available land;
 - b. the central government body for land concludes that the application reasonably asserts that the performance and productivity of the adjacent land will be preserved or enhanced by development and use of the available land;
 - c. The central government body for land concludes that the landholder's application and Business Plan for the land are complete and satisfactory under the criteria set forth in this Order; and
 - d. the negotiated lease rate is no less than the market rate for comparable land; or
3. There is no independent access to the land available for allocation except through an adjacent holding, and
 - a. The holder of the adjacent land applies for the land allocation;
 - b. The central government body for land concludes that the landholder's application and Business Plan for the land are complete and satisfactory under the criteria set forth in this Order; and
 - c. The negotiated lease rate is no less than the market rate for comparable land.

In all cases of land granted under this provision, the central government body for land shall: a) Publish notice of the planned allocation; b) State the reason why it will be an allocation without competition; and c) Allow at least twenty (20) days for objection before the notice is final.

The procedure for notice and objections shall be as set forth in Chapter XI.

⁵¹ Under the 2013 Land Law, the GOR can only make an allocation of land without competition under an order of the Prime Minister. This proposed article is modeled on the land allocation provisions in Queensland, Australia, which allow for land allocations without a competitive process in the circumstances delineated in the proposed article. In addition, in Queensland, the state may grant land without competition if a land use is a high governmental priority, such as granting land for resettlement of a community. Department of Natural Resources and Mines, Government of Queensland. 2009. Land Title Practice Manual. Brisbane: DERM. The authors have not included that option in the Draft Order because allowing government priority for land use to circumvent the decision-making procedure could nullify the entire procedure. In every case, the GOR could identify a priority land use that would allow for allocation without competition. Such a result was not the intent of the 2013 Land Law, which references allocation without competition as the exception and requiring a presidential order (Article 17).

Article 24: Initial review and selection of applications for competitive land allocations for personal use

The central government body for land or a designated decentralized body shall conduct the initial review of applications for competitive land allocations for personal use to be decided by public auction or the deliberation and decision of the central government body for land.

All applications for allocations of land for personal use shall be accepted to participate in selection by public auction or deliberation and decision-making by the central government body for land unless:

1. The proposed land use is inconsistent with any applicable, official land use plan; or
2. The applicant's current landholdings disqualify him or her from eligibility for the land allocation.

Article 23: Initial review and selection of applications for competitive project land allocations

The central government body with authority over investment and development shall conduct the initial review of applications for competitive allocation of land for projects to be decided by public auction or deliberation and decision-making by the central government body for land and other government bodies as provided for in this Order.

The initial review shall include:

1. Checking the veracity of the information submitted by the project promoter; and
2. Researching the project promoter's comparable projects and experience with project development and implementation.

Within three (3) business days of the receipt of the application, the central body with authority for investment and development shall report the findings of the research in writing and attach it to the application with a recommendation whether to allow the application to proceed to public auction or deliberation and decision-making by the central government body for land.

The central government body with authority for land and any other government body responsible for reviewing and decision-making on the applications pursuant to this Order shall decide whether to allow the application to proceed to public auction or to deliberation and decision-making by the central government body with authority for land. In making a determination on the application, the government bodies shall determine whether the project promoter is likely to be a productive and responsible user of land based on an evaluation of the:

1. Project promoter's experience with comparable projects, including the extent to which the project promoter met its obligations under the contract, achieved its objectives, and addressed any anticipated negative social and environmental impacts;
2. Soundness of the promoter's financial status;
3. Suitability of the project to the land and the social, economic, and ecological environment;
4. Reasonableness of the project's financial structure; and

5. Extent to which the project meets the Government of Rwanda's priorities for land use.⁵²

In their consideration of the financial status of local groups, cooperatives, and associations, the government bodies reviewing applications shall consider not only existing assets but guarantees, contractual obligations, commitments from donors, and other types of evidence of financial status.

The central body with authority for land and any other decision-makers shall determine the eligibility of applicants for selection by public auction or deliberation and decision-making within two (2) business days of receipt of the applications from the government body with authority for investment.

Article 26 Public auction of personal land⁵³

In the event that the central government body for land anticipates that there will be multiple applicants for an allocation of personal land, the central government body for land may elect to hold a public auction for all qualified applicants to bid for the land allocation.

The central government body for land shall notify applicants of their selection to participate in the public auction within five (5) working days of the deadline for applications. The auction shall be held no later than ten (10) working days after notification to successful applicants.

For personal land, the central government body for land shall enter into an emphyteutic lease with the highest bidder.

Additional rules governing the public auction shall be the subject of instructions or internal procedures.

Article 27: Public auction for project use land

In the event that the central government body for land, in consultation with the central body with authority for investment and development, anticipates that multiple project promoters of relatively similar qualifications and similar plans for development and land use will apply for a land allocation, the central government body for land may elect hold a public auction for all qualified project promoters to bid for the land allocation.

The central government body for land shall notify project promoters of their selection to participate in the public auction within five (5) working days of the deadline for applications. The auction shall be held no later than ten (10) working days after notification to successful applicants.

⁵² This initial screening process is comprehensive because in the event of selection by public auction, this is the only opportunity the government will have to consider the suitability of the project promoter, the project, and the land use plan. For allocation decisions by the deliberation and decision-making of the central government body with authority for land and other government bodies, this initial screening will help reduce the number of applications that must be considered.

⁵³ Use of an auction to award land should be reserved for circumstances where applications and proposed land uses are quite similar, thus limiting the value of a deliberative process by the decision-makers. When applicants propose different land uses and projects, consideration by the decision-makers under Article 29 and Article 31 is warranted.

The highest bidder shall receive a provisional allocation of land in accordance with Article 32.

Additional rules governing the public auction shall be the subject of instructions or internal procedures.

Article 28: Deliberation and decision-making on land allocation⁵⁴

In the event that the central government body for land anticipates that multiple applicants and project promoters may apply for a land allocation and their proposed land uses and projects will be diverse, the central government body for land shall deliberate and select the recipient of the land allocation in conjunction with other government bodies as provided in this Order.

The decision-makers shall review the applications with reference to the criteria set forth in Article 29 and Article 31. The decision-makers shall assign a rating to each application. The applicant for personal land or project promoter with the highest rating shall be allocated the land.⁵⁵ Ratings shall be decided by consensus.⁵⁶

⁵⁴ RDB and RNRA (or their successor bodies) should ensure that their review of applications is comprehensive and their approval or rejection of a project promoter's application is well-considered and deliberate. This is the stage at which investors with poor (or no) reputations should be rejected, along with those that have questionable financial foundation. At this stage, neither side has much invested in the process and rejection is most easily given and accepted. If GOR has any hesitations about the project promoter or the project, it should articulate them to the project promoter early and in writing. They can be stated in the provisional land allocation, for example, and serve as notice of conditions for an emphyteutic lease. Once the Business Plan is prepared and any studies have been completed, GOR still has the power to reject the project, and should certainly do so if conditions warrant that decision. However, at that point it would be advantageous to Rwanda's business environment to be in a position to require the project promoter to do more project design work as opposed to rejecting the project. If potential investors hear that Rwanda has a practice of rejecting projects after significant expenditure of time and money by a project promoter, its reputation will likely suffer.

⁵⁵ One of the most common ways in which decision-makers in a number of different circumstances review applications is to assign a range of points to various elements of the application. As the decision-makers review applications, they award points, and the application with the most points wins. A slightly more sophisticated alternative uses a two-step process: the points system narrows the field to a few top candidates, and the decision-makers apply a more nuanced set of criteria to determine the winner from the finalists.

⁵⁶ Consensus decision-making is useful in situations where a limited and changing number of bodies will be required to reach a single decision and cross-sector cooperation is a goal. As opposed to majority rule, consensus requires participation of all group members and ideally, encourages a sharing of information, airing of all opinions and perspectives, and discussion of anticipated problems, resulting in an increase in the group's understanding of issues. Consensus decision-making can also help prevent domination of decision-making by the most powerful members of a group, assuming less powerful members are able to present and defend their positions freely. Consensus decision-making is often more time consuming than majority rule, which is generally favored when dealing with decision-making by large groups. However, in a small group such as contemplated in the Draft Order, as experience with the process grows, consensus decision-making should require roughly the same amount of time as a majority vote system. Note, however, that consensus decision-making can also dilute responsibility for follow-through and may result in impasse. Given the nature of the decision-making in this case (i.e., selection or rejection of an application for commercial use of land, the clear delineation of responsibility, and the designation of a single body with primary and lead authority for the process), these risks are likely minimal in relation to the potential benefits of high-quality input and commitment to the decision reached gained from a consensus process. See e.g., E. Paul Hare. 1980. *Consensus versus majority vote: A Laboratory experiment*. Institute of Educational Studies. ERIC. Small Group Research. Vol. 11 No. 2, 131-143; Bruce Wilson. 2005. *When to Use Consensus for Decision-making*. Wilson Strategies; Lani Guinier. 1995. *The Tyranny of the Majority*. New York: Free Press.

The central government body for land shall make its decision within five (5) working days of the application deadline. The central government body for land shall notify the successful and unsuccessful applicants for personal land and project promoters and the public within one (1) business day of the decision.

Article 29: Criteria for decision-making on applications for personal land

The central government body for land and other decision-makers shall use the following criteria, as relevant, in assigning ratings and ranking applications for personal land:

1. Extent to which the proposed land development and use is within the list of appropriate land development and uses identified;
2. Identification of the applicant for personal land as within a group targeted by the Government of Rwanda for support in legislation or government policy documents; and
3. Any other circumstances or information provided that the central government body for land determines to be relevant to the decision-making.⁵⁷

The central government body for land, or other competent body that is authorized to review and render decisions on applications, may request additional relevant information from applicants for personal land. All applicants for personal land shall be advised of the request for additional information and have equal chance to submit the additional information.

Article 30: Allocation of personal land

Applicants for personal land who are selected by public auction or by deliberation and decision of the central government body for land shall be allocated the land for personal use under the terms of an emphyteutic lease, in accordance with the provisions of Chapter V of this Order.

Article 31: Criteria for decision-making on applications for project use land⁵⁸

The central government body for investment and development, the central government body with authority for land, and other decision-makers shall use the following criteria, as relevant, in assigning ratings and ranking applications for project use land:

1. Extent to which the proposed land development and use is within the list of appropriate land development and uses identified;
2. Extent to which the proposed project and land use supports Government of Rwanda policy priorities;
3. Economic feasibility of project (judged against a government-sanctioned model, if available);

⁵⁷ The criteria considered by decision-makers regarding personal land are open-ended, allowing for consideration of any information deemed to be relevant by the decision-makers.

⁵⁸ This suggested list of criteria ties the decision on the applicants for land allocation to the appropriate development level, land uses, and GOR policies and priorities. If, for example, GOR policy prioritizes development of a certain industry in the region where the land is located and industrial development is one of the appropriate uses for the available land, the Committee will assign an application for such development a certain number of points under that category. Similarly, if the GOR has targeted certain populations for support, an application from someone within the group will receive points. The standards referenced are all governed by separate legislation or policy, such as land use plans, policy statements setting out priorities, and the like.

4. Reputation of project promoter for comparable projects;
5. Financial viability of project promoter;
6. Proposed plans for identifying and addressing any environmental and social issues raised by the project;
7. Potential in proposed project for meaningful engagement of local communities in project activities and benefit-sharing, as applicable;
8. Proposed project schedule; and
9. Any other circumstances or information provided that the decision-making body determines to be relevant to the decision-making.

The central government body for land, or other competent body that is authorized to review and render decisions on applications, may request additional relevant information from applicants for project land. All applicants for project land shall be advised of the request for additional information and have equal chance to submit the additional information.

Article 32: Provisional allocation of project land and memorandum of understanding

Project promoters who are selected for allocation of project land by auction or by deliberation and decision shall receive a provisional land allocation.

The provisional land allocation shall be evidenced by a memorandum of understanding signed by the central body with authority for land⁵⁹ and shall condition the land allocation on:

1. Approval of the project promoter's Business Plan;
2. The project promoter's completion of any specific requirements for leasing; and
3. Execution of an emphyteutic lease.

If the parties' efforts to enter into an emphyteutic lease are terminated without reaching agreement, the central government body with authority for land may cancel the provisional land allocation. The central government body shall have the option to:

1. Reconsider other unsuccessful applicants;
2. Initiate a new application process; or
3. Return the land to the inventory.

CHAPTER V: ISSUANCE OF EMPHYTEUTIC LEASES⁶⁰

Section One: Management and Process for Leasing, Generally

Article 33: Authority over negotiation and issuance of emphyteutic lease⁶¹

⁵⁹ As a legal matter, the MOU may also require signature of the government body or quasi-government body who holds the land in its private domain.

⁶⁰ This new chapter lays out separate processes for leases for projects (e.g., commercial investment, social projects such as resettlement schemes, projects for public purposes) and for primarily personal use (e.g., residence, subsistence farm). The use of the qualifier, "primarily," is intended to allow for those land uses that are mostly related to housing and support for the residents, but may include some small commercial uses, such as sale of vegetables or income producing work in the home, such as tailoring.

⁶¹ This article is the companion to Article 4, which identifies the authority for land allocations as with the central government body with authority over land. Authority for procedures relating to negotiation and issuance of the emphyteutic lease is delegated to the proposed Working Committee or other internal body.

The central government body with authority over land has responsibility for managing the negotiation and issuance of emphyteutic leases of the private land of the State and other government bodies.

The designated governmental body shall create a plan for discharging these duties on a regular and ongoing basis. The purpose of the plan shall be to ensure that land is leased in a timely and efficient fashion and in accordance with national policy.

Article 34: Issuance of emphyteutic lease for personal land

The central government body with authority for land shall draft an emphyteutic lease for the allocation of personal land to the successful applicant.

Article 35: Process for issuance of emphyteutic lease for project land⁶²

The process to issue an emphyteutic lease for project land has the following steps:

1. Central government body for land notifies the project promoter in writing of the requirements for issuance of the lease;
2. If the lease requires an Environmental and Social Impact Assessment, environmental permit, or community consultations, the government body with authority over the environment meets with the project promoter to develop a plan for meeting the requirements;⁶³
3. Project promoter takes actions necessary to meet the identified requirements for the lease;

⁶² This section outlines the process followed after a project promoter receives the provisional land allocation. Depending on circumstances, the project promoter may be required to provide an ESIA and conduct consultations with affected communities. In some cases, the studies may already be available and no community consultations are required and the project promoter's task is limited to developing a Business Plan that includes information about how the project will address any issues raised in the report. In other cases, the project promoter, in coordination with the government body with authority for the environment, will need to arrange for the studies and conduct community consultations. In the latter case, there is a danger that the project promoter will try to cut corners in order to save time and money. Project promoters may also be reluctant to spend much time with local communities, leading to pro forma rather than substantive consultations. In Mozambique, for example, its progressive land law required investors to engage in community consultations. However, absent oversight of the process by civil society or local government officials, in many reported cases, the consultations were limited and project designs suffered. Simon Norfolk and Harold Liversage. 2008. Land reform and Poverty Alleviation in Mozambique. A paper for the Southern African Regional Poverty Network (SARPN). <http://www.sarpn.org/CountryPovertyPapers/Mozambique/LandReform/index.php>. In order to help prevent that kind of undesirable outcome, the Draft Order: 1) requires the initial solicitation for applications for a land allocation identify the requirements for any studies and community consultation; 2) creates an opportunity for local authorities to assist project promoters in preparing studies and conducting community consultations; and 3) requires rigorous reviews of Business Plans. A process of negotiations leading to revisions and refinements to draft business plan should be the assumption. If the Working Committee (or other designated decision-making entity) appears to "rubber stamp" the requirements for studies and community consultations, or the review of the requirements is compromised for any reason, the quality of Business Plans submitted (and Rwanda's reputation for promoting quality land investment projects) will quickly decline.

⁶³ An advantage of a system where the applicants receive ESIA and community consultation requirements at the outset is that the early notice allows those unwilling to take on certain environmental or social issues or to engage with local communities to bow out. A downside of this system would be the cost to the GOR to prepare the studies and identify those communities that will be potentially impacted, although some percentage of the costs might be passed on to applicants and potentially the ultimate lessee.

4. Project promoter submits the Business Plan and all required documents for the lease to central government body for land;
5. The government body with authority for the environment verifies the adequacy of any required Environmental and Social Impact Assessment, permit requirements, and community consultations and reports the results to the central government body for land;
6. The central government body for land verifies receipt of all required documents from the project promoter;
7. The central government body for land and other designated decision-makers review the Business Plan and supporting documentation;
8. If project promoter's Business Plan and documentation is acceptable, the central government body for land prepares preliminary lease terms;
9. If documentation is not acceptable, the central government body for land notifies the project promoter of the deficiencies and sets a timeframe for correction. If the project promoter corrects the deficiencies within the established timeframe, the central government body for land proceeds to prepare preliminary lease terms. If the project promoter does not correct the deficiencies within the allotted time, the central government body for land shall notify the project promoter that the provisional land allocation is cancelled;
10. The central government body for land and project promoter negotiate the terms of the lease;
11. The central government body for land finalizes the lease terms and the government body for land executes the lease on behalf of Government of Rwanda;⁶⁴ and
12. The lease is registered.

Section Two: Content of Lease

Article 36: Documentation required to support emphyteutic lease for projects

The central government body for land shall require the following documents to be submitted by a project promoter in support of an emphyteutic lease for a project:

1. Proposed Business Plan;
2. If applicable, an Environmental and Social Impact Assessment approved by the government body with authority over the environment;
3. If applicable, verification by the government body with authority over the environment that the project promoter fulfilled obligations of community consultation;
4. If applicable, written agreements between the project promoter and any affected local communities; and
5. If applicable, any required permit(s).

Article 37: Content of Business Plan

The Business Plan submitted in support of the emphyteutic lease shall have the following components:

⁶⁴ The Draft Order is drafted on the assumption that the land allocations and leases will be entered into by the Minister of Land, Deputy Minister, Registrar or other central-level official on behalf of the GOR. However, other options include the actual governmental body that holds the land serving as the signatory, or, potentially, the central committee as a separate entity from the central governing body with authority over land. A number of issues are raised in this decision, and should be discussed in the course of decision-making about the system for land allocations and leasing.

1. A summary of the project, its objectives, and timeline.
2. A plan for the development and use of the land for the project.
3. If applicable, a statement of how the planned land use is consistent or inconsistent with the findings of the Environmental and Social Impact Assessment and any community consultations; a plan for how the project will incorporate the environmental and social recommendations set out in the Environmental and Social Impact Assessment and community consultations; and a statement of any other actions that the project will take to mitigate environmental and social risk or create positive environmental and social impact.
4. A summary operations plan.
5. A statement regarding the management and organization of the project.
6. A statement of the financial structure for the project including financing required and sources of finance.
7. Identification of risks and plans to address the risks.
8. Other information identified as relevant to the specific site or project.

Any required Environmental and Social Impact Assessment or other studies; any required verification by the government body with authority over the environment that the project promoter fulfilled obligations of community consultation; any applicable, written agreements between the project promoter and any affected local communities; and any required permits shall be appended to the Business Plan.

Article 38: Environmental and Social Impact Assessment process and content

The process for conducting the Environmental and Social Impact Assessment and the content of the Environmental and Social Impact Assessment shall be governed by Organic Law No. 04/2005 of 08/04/2005, any superseding legislation, related legal instruments and instructions, processes and procedures of the government body with authority for the environment, and this Order.⁶⁵

The Environmental and Social Impact Assessment process for applications for land allocations shall include a process for public comment on the draft Environmental and Social Impact Assessment.⁶⁶ The process shall include:

1. Notice of availability of the draft Environmental and Social Impact Assessment for review by interested parties, including stakeholders, civil society organizations, and local community members in the area where the proposed project will be sited.
2. A reasonable opportunity for interested parties to provide comments on the draft Environmental and Social Impact Assessment, in writing or in a public meeting held for that purpose. The period for public comments submitted in writing shall be no less than ten (10) business days following publication of the draft Environmental and Social Impact Assessment.
3. A sufficient number of public meetings to ensure that stakeholders had a reasonable opportunity to be heard on the subject of the proposed project;⁶⁷

⁶⁵ The Draft Order extends the existing EIA requirements by emphasizing the social impact assessment and requiring an opportunity for the public to comment on the draft ESIA. As noted in the Overview of the Draft Order (Section 2), both of these requirements are consistent with best international practice and are part of the framework for environmental assessments in a number of African countries.

⁶⁶ Public notice and comment is best practice for ESIAs. See discussion in USAID-Rwanda LAND. Draft Presidential Order on Modalities for Use, Development, and Management of Swamp Land in Rwanda.

4. Recording of any public meeting, including comments made and responses of the Government of Rwanda and project promoter.
5. The final Environmental and Social Impact Assessment shall summarize or attach the comments received and identify the manner in which the final Environmental and Social Impact Assessment responded to the comments received. The final Environmental and Social Impact Assessment is prepared by the Environmental and Social Impact Assessment provider.

The government body with authority for the environment shall be responsible for managing the process for giving notice of the draft Environmental and Social Impact Assessment, collecting comments, holding the public meeting(s), and recording the proceedings of the public meeting(s).⁶⁸ The government body may delegate any specific activities relating to the Environmental and Social Impact Assessment consistent with the terms of this Order.

Notice shall be given in accordance with the procedures set forth in Chapter XI of this Order.

Article 39: Review and approval of the Environmental and Social Impact Assessment

The government bodies responsible for reviewing the Environmental and Social Impact Assessment shall evaluate whether the Environmental and Social Impact Assessment:

1. Met the requirements for Environmental and Social Impact Assessment process and content set forth in the applicable legislation and any supporting instructions and procedures;
2. Provided the information and analysis necessary to determine whether the project is suitable for the location under environmental and social measures;
3. Provided the public with a meaningful opportunity to review and comment on the draft Environmental and Social Impact Assessment;
4. Provided constructive recommendations for addressing environmental and social factors at the project site and for mitigating specific risks; and
5. Addressed any public comments made.

The central government bodies responsible for approving or rejecting the Environmental and Social Impact Assessment must reach consensus on the decision on the Environmental and Social Impact Assessment.

Article 40: Community consultations

The central government body for land shall require a holder of a provisional land allocation to engage in meaningful consultations with local communities when the government body with authority over the environment, in consultation with local authorities, determines that local communities may be negatively impacted by the proposed land use. The process of meaningful consultation shall include:

⁶⁷ In most cases, one or possibly two public meetings will likely be sufficient, unless the project is quite large or will be implemented in more than one location. The standard is whether the public had a reasonable opportunity to be heard. For many stakeholders, the ability to present written comments will be sufficient. However, a public meeting will likely be needed to gather comments from local community members.

⁶⁸ As stated in Article 10, the government body can delegate these duties to a civil society organization or decentralized government body.

1. Preparation of a plan for consultations, including identification of the local community(ies) and objectives for the consultations. The objectives of the consultation shall include: communication of the planned development; description of how potential beneficial and adverse impacts of the planned development will be collected; solicitation of community opinions on the planned development and anticipated beneficial and adverse impacts; and solicitation of ideas for increasing beneficial impacts and reducing adverse impacts;
2. Identification of various potentially marginalized groups within each community, such as women, youth, and disabled individuals for inclusion in the consultations about the project;
3. Communication of any opportunities for direct or indirect community engagement in the project and receive input;
4. Preparation and execution of any agreements between the project and community, as agreed; and
5. Prepare and deliver report of results of consultations to central government body with authority for land.

The project promoter shall work with the government body with authority over the environment and local authorities to fulfill the obligations in this article.

The central government body for land shall notify project promoters of the requirement for community consultations in the initial solicitation for applications. The central government body for land shall set out specific requirement in the memorandum of understanding that evidences the provisional land allocation.

Article 41: Review and approval of fulfillment of the community consultation requirement

The government bodies responsible for reviewing the fulfillment of any applicable community consultation requirement shall evaluate whether the project promoter:

1. Met the requirements for the community consultation process set forth in the applicable legislation and any supporting instructions and procedures;
2. Provided the information and analysis necessary to determine whether the project is suitable for the location based on the results of the community consultations; and
3. Provided constructive recommendations for addressing issues arising out of the community consultations.

In accordance with Article 43, the central government bodies responsible for reviewing the Business Plan must reach consensus on whether the process conducted and outcomes met the standards for community consultations under this Order and any procedures and instructions.

Article 42: Permit [or license]⁶⁹

⁶⁹ A permit (or license) is one kind of authorization system tool that can help countries extend development activities to sensitive areas by regulating particular uses. Specifically, permits are a common tool countries use to handle dual use areas, such as land used for both agricultural activities and environmental conservation. A permit system regulates the agricultural uses in a manner that allows for environmental conservation objectives to be met. A permit system also provides the governmental body with authority for the environment a basis on which to require compliance that is separate from the emphyteutic lease and a basis on which to generate revenue to cover research monitoring, and enforcement costs incurred by the government body.

The central body with authority over the environment or other sectors impacted by the project⁷⁰ may require the project promoter to obtain a permit or license for planned activities in accordance with that government body's regulations. The issuing body may require that the project promoter pay any permit or license fee directly to the issuing body.

Any permit or license obtained shall be appended to the emphyteutic lease and registered with the transfer of land use rights.

Article 43: Review and approval of the Business Plan

The government bodies responsible for reviewing Business Plans shall evaluate the Business Plan and any attachments with relation to the following:

1. The Government of Rwanda's priorities for land use;
2. Project promoter's planned land use and project development;
3. Anticipated impact of the project on the environment;
4. The project promoter's plan to address any adverse environmental impacts or create positive environmental outcomes;
5. Anticipated impact of the project on the local community;
6. Project promoter's plans to address any adverse impacts on the local community or engage with the local community or create positive social outcomes;
7. Project promoter and, if applicable, project implementer's experience with comparable projects, including any environmental and social issues;
8. Soundness of the financial structure of the project;
9. Reasonableness of the timeframe for the project;
10. Support of the District Administration for the project;
11. Other potential benefits from the project; and
12. Other potential adverse impacts from the project and options for mitigation.

The central government bodies responsible for decision-making on a Business Plan must reach consensus on their decision. The governmental bodies may reach consensus on one of the following decisions on a Business Plan: 1) approve; 2) reject;⁷¹ or 3) conditional approval, with requirements for revision and supplementation.

The decision-makers shall issue their decision on the Business Plan within five (5) days of receipt from the project promoter.

⁷⁰ Most permits in this context are issued by the government body with responsibility for the environment. However, depending on the circumstances, other GOR bodies, such as those responsible for water and sanitation, export and trade, etc. might require permits for certain activities.

⁷¹ As discussed in Section 2 of the report, while the GOR should certainly reject any Business Plan and project that will not meet its standards, rejection at this stage should be avoided if possible because of the potential negative impact that rejections at this stage in the process will have on the country's reputation for investment. Accordingly, the GOR will be well-served by conducting a comprehensive assessment of the interests, needs, and issues within local communities that may be impacted by proposed development well in advance of the time that a project promoter creates a Business Plan. The community consultation process conducted by the project promoter should be considered primarily a process focused on the project components, not whether the project is advisable; the determination of the advisability of certain projects in certain areas should be made by the GOR in advance (ideally prior to the publication of the notice of land allocation).

The approved Business Plan and its appendices shall be attached to the agreement and incorporated by reference.

A template is appended as Annex 3.

Article 44: Incentives

The government bodies with authority over the management of land under this Order shall have the power to provide project promoters with incentives for the following activities:

1. Protection of the environment through use of low impact technology and other environmentally friendly tools and techniques in project operations;
2. Rehabilitation of degraded land and restoration of ecosystems when the damages were not caused by the project promoter or project implementer;
3. Engagement of the local community in project activities or implementation of benefit-sharing programs with local communities adversely impacted by the project; and
4. Other activities agreed to by the government bodies as appropriate to incentivize in order to achieve Government of Rwanda objectives.

The decision whether to grant incentives for any of the activities shall be at the discretion of the government bodies. If the government bodies elect to offer an incentive program, they shall make the program available to all similarly situated projects.

Incentives shall be set forth in the emphyteutic lease. No incentive shall be earned, regardless of activity or performance, if the provision for incentives is not included in the emphyteutic lease.

Incentives may take the form of renewed or extended contracts, forgiveness of some or all of a financial obligation, a monetary or nonmonetary award, or other consideration. The structure, nature, and amount of any incentive shall be as agreed to by the government bodies with authority over the management of land under this Order.

Incentives, performance relative to incentives, and receipt of incentives shall be subject to transparency and disclosure requirements applicable to the emphyteutic lease and government contracting.

Article 45: Subsidies

The government bodies with authority over the management of land under this Order shall have the power to provide project promoters with subsidies to the extent they qualify under a Government of Rwanda program or opportunity.

CHAPTER VI: TERMS OF EMPHYTEUTIC LEASE

Article 46: Content of lease

The emphyteutic lease shall contain the following provisions:

1. Identity of the parties;
2. Duration of the agreement;
3. Right to renewal;

4. Description of land rights transferred;
5. Rights and obligations of the lessee;
6. Rights and obligations of the Government of Rwanda;
7. Rights and obligations of any third parties with regard to the land;
8. Rent or fee;
9. Subsidies and incentives;⁷²
10. Compliance, breach of the agreement, and consequences; and
11. Termination of the agreement.

Article 47: Rights and obligations

The rights and obligations of the lessor and lessee to an emphyteutic lease shall be as set forth in the lease document and any attachments.⁷³

Article 48: Length of emphyteutic leases⁷⁴

Emphyteutic leases entered into with lessees who are Rwandan citizens shall be issued for a period within the ranges listed below, based on the lessee's land use.

Emphyteutic leases entered into with foreign lessees shall be for the same periods of time as listed below, with leases limited to 49 years.

If a leasehold is jointly held by Rwandan citizens and foreigners and if Rwandan citizens hold at least 51% of the interest in the emphyteutic leasehold, the lease periods available to Rwandan citizens shall apply.⁷⁵

All emphyteutic leases shall be renewable for an equivalent period of time as the initial lease.

| No. | Planned land use | Years |
|-----|--|-------|
| 1 | Residential, including <i>umudugudu</i> , community, cultural, and social uses | |
| 2 | Light industry | |
| 3 | Medium industry | |
| 4 | Heavy industry | |

⁷² For example, The Organic Law No. 04/2005 of 08/04/2005 determining the modalities for protection, conservation and promotion of the environment notes that some incentives may be available under the National Fund for the Environment (Articles 71-73).

⁷³ The authors recommend setting out the statements of the rights and obligations of parties to the lease in the lease document. In many cases, especially with personal, non-commercial use of land, the form lease will suffice. In other cases, the lease form can be adapted with an addendum containing agreed terms in addition to the agreed Business Plan, although certain standard clauses will be included in every case. The use of the lease document to set out the terms will help avoid inconsistent statements of the rights and obligations between the lease and the Order and will give the GOR the most flexibility; the responsible governmental authority can alter the terms on any particular lease, or make a change to the form provisions, as it wishes, as opposed to trying to limit the effect of the Order or revise the Order.

⁷⁴ This section should be reviewed with reference to the memo and comparative chart prepared by the LAND Project relating to lease periods.

⁷⁵ The article suggests that in the event that Rwandan citizens and foreigners share a leasehold, the longer lease periods available to citizens apply so long as Rwandans hold at least 51% of the interest in the leasehold.

| No. | Planned land use | Years |
|-----|--|-------|
| 5 | Commercial | |
| 6 | Agriculture | |
| 7 | Livestock | |
| 8 | Forestry | |
| 9 | Environmental and biodiversity protection | |
| 10 | Tourism | |
| 11 | Mining | |
| 12 | Infrastructure, including energy, transportation, water and sanitation, and communications | |
| 13 | Public administration | |

Article 49: Registration of emphyteutic lease

All emphyteutic leases shall be signed and registered by the Office of the Registrar of Land Titles.

Single women and single men shall have the right to register as sole emphyteutic lessees.

Article 50: Rights of spouses and other family members

Without prejudice to the law on succession or the rights of single women and single men to register as sole lessees, the rights of relatives of the lessees who have interests in or over the land shall be stated on the certificate noting the leasehold interest.

Article 51: Resumption of land leased for public purposes⁷⁶

The Government of Rwanda reserves the right to resume up to five percent (5%) of the land leased for public purposes without payment of any compensation for the land retaken.

The land resumed shall strictly comply with the requirements for the use for which it was resumed. Where the resumption makes it unfit for the remaining land to be used according to its designated use, the lessee may apply for change of use or compensation for the land expropriation.

Article 52: Additional obligations

The governmental body with authority over land may establish additional obligations relating to the productive use of leased land so that the land uses comply with the land use and management plan of areas where that land is located.

Emphyteutic lessees shall be notified of any additional obligations, including changes in land uses, in the following manner:

1. Land use obligations are published in the Official Gazette of the Republic of Rwanda.

⁷⁶ This provision should also be included in the lease documents where the planned development and land use is for a public purpose.

2. The District Land Officer must display a copy of the additional conditions in an open place at the Land Bureau and the Sector office where that land is located.

Emphyteutic lessees will have a period of at least one (1) year from the day of publication of any new land use or other additional requirements to bring the use of the land under lease into compliance.

Article 53: Applicable law for leases on land with mining activities⁷⁷

The allocation and lease of mining sites and quarries shall be governed by the legal framework governing minerals and mining and the environment.

Article 54: Rights and obligations of emphyteutic lessee on mining land

The emphyteutic lessee has no right to minerals on or beneath the surface the leased land.

The emphyteutic lessee shall permit authorized persons to enter the leased land for purposes of research, exploration, or extraction of minerals in accordance with applicable law. The emphyteutic lessee shall be entitled to compensation for any damage to the leased land that interferes with the lessee's land use and any damages to any improvements or activities of the lessee.

Where the mining operations may affect the emphyteutic lessee's activities and the lessee wishes to terminate the lease, the lessee shall be compensated in accordance with legislation related to expropriation in the public interest.

Article 55: Timing of issuance of emphyteutic lease for projects⁷⁸

The project promoter is expected to pursue fulfilling the requirements for initiation of lease negotiation with diligence and to complete the process in a timely manner.

If at any time the central government body for land believes that the project promoter is not making appropriate progress toward fulfilling the requirements for a lease, the central government body for land may give the project promoter written notice requiring the project promoter to produce documentation of the progress made. In the event that, upon review of the documentation of progress or the project promoter's failure to produce such documentation, the central government body for land believes the progress made is insufficient due to the fault of the project promoter, the central government body for land shall require the project promoter to agree to a timeline for meeting the requirements. If thereafter the project promoter fails to follow the timeline due to his or her own fault, the central government body for land may cancel the provisional allocation of land.

⁷⁷ The Draft Order has reorganized the content of the 2008 Order relating to mining land and placed it in a single location. The articles set out the rights and obligations of lessees on mining land, in the context of the framework of the separate laws governing such activities.

⁷⁸ This provision does not set a timeframe for the production of any assessments and conduct of community consultations. The omission is intended to allow the project promoters time to conduct studies and consultations in a meaningful fashion and without the threat that the land allocation will be cancelled. Most project promoters will be highly motivated to complete the requirements and enter into the leases as quickly as possible. However, if the central body with authority for land believes that the project promoter is not making sufficient progress, it can attach a timeline to the process.

Upon receipt of the project promoter's submission in support of the lease, the governmental body responsible for reviewing the documentation submitted shall notify the prospective project lessee within two (2) days of submittal if there are any deficiencies in the submission.

If there are no deficiencies in the project promoter's submission, the central government body for land shall provide the project promoter with the proposed lease within three (3) working days of the project promoter's submission. The parties shall reach final agreement on the terms of a lease and execute the lease no later than five (5) working days after submission of the project promoter's submission, unless otherwise agreed by the parties.⁷⁹

CHAPTER VII: TRANSACTIONS RELATED TO LAND UNDER EMPHYTEUTIC LEASE

Article 56: Rules governing transactions⁸⁰

Transactions related to land under emphyteutic leases are subject to specific rules set forth in this Order.

Article 57: Method of transaction

Transactions related to land under an emphyteutic lease must be conducted by a written instrument that contains the following information:

1. The parties to the transaction;
2. A description of the transacted land and its location;
3. The intended effect of the transaction;
4. The time left on the lease;
5. Whether the lessee(s) has (have) a certificate of leasehold title; and
6. Evidence of the consent to the transaction of all those with legal interests in the leasehold.

Article 58: Registration of transaction

All transactions relating to land under an emphyteutic lease that is registered shall be registered.

Article 59: Transactions related to land of minors, incompetent and wards of the court⁸¹

Notwithstanding the previous article and without prejudice to provisions of the Civil Code relating to guardianship, loss of authority due to incapacitation, legal counsel support, any proposed transaction of land held by an Administrator on behalf of a minor or minors

⁷⁹ This timeline is aggressive but the parties can mutually agree to another period.

⁸⁰ The revisions to this section of the 2008 Order include requiring transactions to be evidenced in writing.

⁸¹ The Draft Order retains the provisions relating to transactions relating to land of minors as they were drafted in the 2008 Order because it appears that they were prepared to address a specific risk.

or an incapacitated person or persons or a ward of the court shall require prior approval of the District Land Bureau where the land is located.

Any transaction of land held by an Administrator on behalf of a minor, an incompetent or a ward of the court shall be void if it does not comply with the provisions of this article, and any person who knowingly enters into any such transaction with an Administrator shall be accountable to the minor, the incompetent or the ward of justice for any gains he or she may have made from the transaction and for any losses suffered by the minor, the incompetent or the ward of justice from the transaction.

An Administrator who undertakes a transaction that does not comply with the provisions of this article shall be personally accountable to the minor, the incompetent or the ward of justice on whose behalf he or she is acting as an Administrator for any gains or losses arising from such a transaction.

CHAPTER VIII: CHANGE OF THE INTENDED USE OF LAND BY LESSEE⁸²

Article 60: Prohibition against change in land use contrary to land use plan

Land under an emphyteutic lease shall comply with national, district, and municipal land use plans.

An emphyteutic lessee shall not alter the use of land under an emphyteutic lease that is contrary to an established land use plan, except by an order of the Minister having land in his/her attributions.

Article 61: Request to change land use

Emphyteutic lessees of personal land and project land may apply for change of land use that is consistent with the established land use plan.

Emphyteutic lessees of such land must use the form attached as Annex 5 of this Order to request a change in land use.

The emphyteutic lessee must submit the request to the authority handling land allocations and leasing, or its designee, prior to making any change in the land use.

Article 62: Application to change land use

Applications for a change in use of land within an established land use plan must include:

1. Identification of the lessee, including any spouse or other interest holders, as applicable;
2. Identification of the land;
3. The reason for the change in land use;
4. The planned new land use; and

⁸² The Draft Order retains most of the content of the 2008 Order on the changes in land use, with adjustments for consistency with proposed new content. As with the assignment of confiscated land, we recommend using the same bodies and formal processes as for land allocation and leasing. However, as noted in the text, if some aspects can be delegated to local bodies, that is permissible.

5. The requested term of the lease in accordance with the time frames for the proposed new land use.

The application must be supported by a clearance certificate issued by local authorities.

For a change in land use for project land, the applicant must provide a new business plan based on the change in land use.

Article 63: Impact of changed land use on period of lease

In the event of an authorized change in the use of land under an emphyteutic lease, the emphyteutic lessee shall be entitled to a lease period applicable to the new land use, without regard for the number of years that the emphyteutic lessee has leased the land under the prior land use.

Article 64: Authority over land use changes

The central government body for land has decision-making authority over changes in uses of land under emphyteutic leases. The central government body for land may delegate decision-making authority to a competent decentralized body, subject to the central government body for land's review of the proposed decision.

Article 65: Criteria for reviewing application for change in land use

The central government body for land or its designee shall base its decision on the request on the following criteria:

1. Need for a change in land use, as stated in the application;
2. Relative value of the current and desired land uses under Government of Rwanda policy;
3. Economic feasibility of the new land use;
4. Compliance with any applicable Environmental and Social Impact Assessment and other standards; and
5. The requested term of the lease, which must be within the range assigned under this Order for the land use.

The central government body for land or its designee may request additional information or conduct a site visit in order to reach its decision.

Article 66: Decision on application

The decision of the central government body for land or its designee on an application for a change in land use shall include:

1. Whether the application is granted or denied;
2. The new land use; and
3. If the land use is changed, any change in the length of the lease.

Article 67: Time

The central government body for land shall make its decision on an application for a change in land use for individual land within 14 days of receipt of the application. If the central government body for land has delegated the review of the application, the

decision-making authority must seek review of the proposed decision by the central government body for land. The decision-making authority must submit its proposed decision to the central government body for land within seven (7) days of receipt of the application. The central government body for land shall have seven (7) days to make the final decision.

Article 68: Notification of the change in lessee's intended use of land

The central government body for land or its designee shall notify the applicant of the decision on the application for a change in land use within three (3) days of its decision.

The central government body for land shall notify the Registrar of a decision authorizing the change in land use for registration of the change.

Article 69: Registration of changed land use

The Registrar shall register the change in land use and any change in the term of the lease on the Certificate of Leasehold Title.

CHAPTER IX: COMPLIANCE AND ENFORCEMENT

Article 70: Inspection of land

Authorized land officials have the authority to visit, enter onto, and inspect land subject to an emphyteutic lease for purposes of determining compliance with the terms of the lease.

Authorized inspections can be conducted at any reasonable time, without prior notice to the lessee.

Article 71: Report of inspection

The authorized land official who conducts an inspection shall prepare a written report of the inspection. The report shall be filed with the local office with authority over land and the central government body for land, and a copy provided to the lessee within five (5) days of the inspection.

Article 72: Noncompliance

Lessee noncompliance may be classified as *de minimus* or material. Noncompliance is *de minimus* when the lack of compliance relates to a trivial or minor requirement that does not adversely impact the achievement of the purpose of the emphyteutic lease or any substantive term of the agreement. Noncompliance is material when the lack of compliance goes to the heart of the emphyteutic lease or some term of the agreement or may adversely impact the achievement of anticipated outcomes.

A lessee is required to correct an issue of *de minimus* noncompliance within thirty (30) days. If a *de minimus* issue of noncompliance extends past thirty (30) days, or if a lessee has more than three (3) issues of *de minimus* noncompliance in a 12-month period, the noncompliance shall be classified as material.

In the event of an issue of material noncompliance, the government body responsible for monitoring the lease shall provide the lessee with a written statement of material

noncompliance within ten (10) business days of discovery of the noncompliance. The government body and the lessee shall discuss how the project will remedy the issue and agree on a deadline for correction. If no deadline is agreed, the government body shall assign a deadline and give written notice of the deadline to the lessee within 20 business days of discovery of the issue of noncompliance.

If the lessee fails to correct an issue of material noncompliance within the stated time frame without reasonable cause, the material noncompliance shall be considered a material breach of the emphyteutic lease.

Article 73: Monitoring and reporting

The central government body with authority for land shall have primary authority for monitoring the lessee's overall compliance with the emphyteutic lease.

The central government body with authority for the environment shall be responsible to monitor the lease with respect to any environmental and social impacts in accordance with its regulatory standards and procedures and any permits issued.

The central government bodies with responsibility for monitoring may delegate routine monitoring tasks to another competent government or non-governmental body. The central government body shall oversee the performance of the delegate and shall continue to be responsible for the results.

Entities monitoring the lease shall provide a written report of the lessee's activities and compliance in accordance with its contractual and regulatory obligations on a quarterly basis. If a lessee has four consecutive quarterly reports of full compliance, monitoring and reporting shall be done on a semi-annual basis. In the event that a lessee has had an incident of material noncompliance, monitoring reports shall be conducted on a monthly basis until the lessee comes back into compliance and has three (3) consecutive months of material compliance. Monitoring shall be quarterly thereafter.

Article 74: Enforcement of agreement and remedies

In the event of breach of the emphyteutic lease, the parties shall have all remedies provided by contract and common law and the legislative framework, including modification of the agreement, the assessment of penalties and sanctions, revocation and termination of the agreement, damages, eviction, and any equitable remedies, if available.

CHAPTER X: LEASE TERMINATION

Article 75: Termination of emphyteutic leases⁸³

The central government body for land may terminate emphyteutic leases in the following circumstances:

⁸³ This article puts responsibility for termination of emphyteutic leases with the proposed Working Committee, or other internal body within the government body with authority over land. As discussed above, especially in the initial period of operation, centralizing the function (or oversight of the function) of lease termination will help build knowledge of issues arising with leases. If the process is too burdensome for a central committee, the administration can be handled by competent decentralized bodies, with the central body serving in an oversight role and signing off on the final decisions.

1. Land confiscation, in accordance with the applicable law governing land;
2. Land expropriation the public interest, in accordance with the applicable law on expropriation in the public interest;
3. Land abandonment, in accordance with the terms of the relevant law governing abandonment of land and the rules set out in this Order; or
4. Material breach of the lease, in accordance with recognized principles of contract law.

Article 76: Procedure for determining whether leased land is abandoned⁸⁴

With the exception of abandoned properties as identified in Article 2, No. 4 of the Law 28/2004 of 03/12/2004 relating to the management of abandoned properties and managed in accordance with that law, a land lease shall be deemed to be abandoned where an authorized official of the body responsible for land determines that, based on reasonable investigation, the land or any substantial buildings on the land are:

1. No longer capable of being used for productive purposes; or
2. Suffering serious environmental damage, as determined by the public organ in charge of environment.

If an authorized officer determines that land under emphyteutic lease may have been abandoned, the officer shall:

1. Notify the central government body for land;
2. Send written notice to the registered lessee; and
3. Post a notice at the cell, sector and District land offices in the area where the land is situated. The notice shall:
 - a. Identify the land by location and boundaries;
 - b. State the grounds for a determination of abandonment;
 - c. State the timeframe for persons to object to a decision of abandonment that is not less than sixty (60) days from publication of the notice; and
 - d. State the process for making the objection.

Article 77: Notice to central government body for land of cause for lease termination⁸⁵

All local and specialized government bodies with information relevant to the status of a lease and possible termination of a lease shall provide that information to the central government body for land upon receipt of the information.

Article 78: Notice of termination and right to contest⁸⁶

⁸⁴ This article, which is based on the 2004 law regarding abandoned land and the 2008 order, should be revised in accordance with the new law regarding abandoned land.

⁸⁵ This article requires notification to the central body with authority over land of circumstances that might result in lease termination, such as a planned land expropriation or apparent land abandonment.

⁸⁶ This article provides an emphyteutic lessee with a right to contest the termination of a lease. The time period for termination, which is set by the 2013 Land Law, is quite short (15 days), and leaves little time for review of the proposed action. Nonetheless, a chance to contest the action and time for meaningful review of the decision must be provided. That process supports principles of property rights, accountability of government action, and due process.

The central government body for land must give the lessee at least fifteen (15) calendar days written notice before termination of a lease. Notice shall be provided according to the standard set forth in Chapter XI of this Order and set forth the reasons for the termination.

The lessee shall have seven (7) days to file an objection to the notice of termination of the lease. The lessee shall file the objection with the central government body for land and provide a statement why the lease should not be terminated and attach any relevant documentation. Such challenge shall include any outstanding or prospective claims that the lessee has or may have against third parties or that the GOR has against the lessee based on the lessee's status as lessee.

The central government body for land shall review the objection and all supporting documentation and decide within seven (7) days whether to continue with the termination of the lease or withdraw the notice of termination.

The central government body for land will advise the lessee in writing of its decision on termination at the time it is made. If the central government body intends to proceed with termination of the lease and the lessee has identified any claims or interests that it has against third parties or if the GOR has any claims against the lessee based on his or her status as a lessee, the central government body shall provide the lessee with a written statement as to how it plans to handle pending or potential claims.⁸⁷

The lessee shall have the right to present his or her objection to the termination of the lease or plan for handling any pending or prospective claims of the lessee against third parties to the central governmental body with authority over land for review, in accordance with the provisions in Chapter IX.

The process for contesting a termination under this article is in addition to any right to review provided for Chapter XI of this Order. The right to seek review under Chapter XI shall commence following the central body's issuance of its decision on the termination of the lease under this article.

Article 79: No termination of leases of minors, incompetents, or wards⁸⁸

An emphyteutic lease held by a minor, an incompetent, or a ward of justice cannot be terminated.

Article 80: Obligations of Administrator

Without prejudice to the provisions of the civil code, when an administrator does not comply with the lease obligations, the Sector Land Committee, shall request, all excuses ceasing, the supervising guardian if there is one, or the head of the family in the absence of the supervising guardian, to start and speed up the process of replacement of the administrator. When the administrator is not yet appointed, the Sector Land Committee manages the patrimony of the minor, the incompetent or the ward of justice.

⁸⁷ As a matter of standard legal practice, any pending or prospective claims would be handled within the lease termination document and are generally a matter for negotiation between the parties. The central government body and lessee may, however, enter into a separate document if desired. Support should be provided to any lessee who lacks the capacity to negotiate the terms of any outstanding claims.

⁸⁸ As above, the provisions regarding the treatment of minors, incompetents, and awards of the court are special circumstances and the existing provisions are retained in the Draft Order.

A person who administers the patrimony of person who is a minor, mentally incompetent or a ward of the court shall only be registered as an administrator on the lease certificate and must discharge his obligations in accordance with the provisions of the Civil Code.

Article 81: Effect of lease termination⁸⁹

Upon the expiration of the fifteen (15)-day notice period for lease termination without successful challenge or intervening circumstances, and unless as provided otherwise in any document entered into by the lessor and lessee governing the termination of the lease:

1. The lease shall be terminated;
2. All derivative rights created out of the lease shall be terminated;
3. If the lease was registered, the Registrar shall cancel the registration and the certificate of leasehold title;
4. The leased land shall be listed in the inventory of land in the private domain of the State and other government bodies that it is available for allocation;
5. Any taxes or other dues owing to the government arising out of or attributable to the lease shall be extinguished;
6. Any rights of the lessee against third parties that are based on the lessee's status as lessee shall be assumed by the Government of Rwanda as lessor; and
7. The Government of Rwanda retains the right to pursue the lessee for any unfulfilled obligations.

CHAPTER XI: MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

Section One: Miscellaneous provisions

Article 82: Request for information⁹⁰

Any governmental body with authority over land may, by notice in writing, require an emphyteutic lessee provide the governmental body with information, in writing or by interview, about the occupation and use of the leased land.

If a lessee cannot respond in writing, the responsible officer shall interview that person and obtain the required information by means of that interview. The interviewee may request another person for his or her choosing be present at the interview and may decline to be interviewed if after making such a request, no person is present at the interview. In that circumstance, the official may arrange for a third party of the official's selection to be present.

Article 83: Serving notices to individuals⁹¹

⁸⁹ This article is retained as drafted, with additions related to the listing of the previously allocated land in the land inventory and clarification of the legal rights of the parties after the lease is terminated.

⁹⁰ This article is retained, with some revisions for clarity, from the 2008 Order. The article appears drafted to address the particular issues faced by land officers in attempting to collect information from local communities. Allowing for/requiring a witness to statements made is appropriate given the consequences that may flow from the information given and should be encouraged.

⁹¹ These notice provisions are retained as written in the 2008 Order, with some revisions for clarity. If Rwanda has had recent experience with issues arising from attempts to give notice, that experience

Without prejudice to the notice provisions in this Order or related legislation, governmental notices that are served on individuals shall be prepared in both English and Kinyarwanda and delivered to the individual by hand, or sent to the individual at the address of record. If the governmental body has reasonable cause to know that these methods have not been successful, notice shall be made by affixing a copy of the notice in a conspicuous place at the District, sector, and cell offices where the land is located.

Article 84: Serving of notices to the general public

Where a notice or other information is to be published or given such publicity as will bring it to the attention of all persons likely to be affected by it, the governmental body responsible for issuing the notice shall:

1. Draft the notice in both English and Kinyarwanda;
2. Affix the notice in a conspicuous position at the sector and cell offices of the sector and cell in which the land is located and in such other public places in any cell or village as the sector executive secretary shall direct; and
3. Summarize the notice and communicate it orally to the people living and working in the area where the land is located at such meetings as may be convened by the sector or cell executive secretary for that purpose.

Article 85: Fees and charges⁹²

Any fees or charges payable under this Order shall be prescribed in specific laws or gazetted regulations developed by competent authorities in accordance with the law.

The Registrar shall refuse to make an entry in the register of title or register a document in respect of a lease or a disposition of or arising in connection with a lease in respect of which a charge has not been paid in whole or in part, unless and until he or she is satisfied on the basis of written evidence produced before him or her that it has been agreed between the payer and payee that such charge may be paid in instalments and there are no arrears in those instalments.

Unpaid fees or charges incurred by the Government in connection with any attempt to recover an unpaid charge shall constitute a civil debt owed by the payer to the Government.

The governmental authority responsible for land shall establish arrangements to review, and if the case is made out to remit in whole or in part the charges and fees payable by any person in connection with the holding of a lease who claims that by reason of poverty, infirmity, the effects of a natural or other disaster or other similar cause, he or she cannot pay the charges or fees required to be paid under a lease and thereafter to keep such case under continuous review and, where necessary, make further adjustments, either to increase or reduce the charges or fees which are to be paid.

Article 86: Right of review⁹³

should be reviewed to ensure that these provisions are closely tailored to the particular environment and target any particular issues.

⁹² These articles are retained as written in the 2008 Order.

Anyone adversely impacted by the actions of the relevant governmental body with relation to land allocation, land lease, change of use, and lease termination can seek review of the action by the governmental body that took the action. The request for review shall be made in writing and shall be supported by any relevant documents or information. The governmental body shall review the matter in accordance with procedures adopted by the central governmental body with authority over land, and in accordance with any administrative procedures governing procedures for the internal review of governmental actions. The governmental body shall render a decision in writing within fifteen (15) days from the date of receipt of the request for review.

If the petitioner is not satisfied or no reply was given within the time specified in paragraph one of this article, the petitioner can refer the matter for review by the central governmental body with responsibility for land. The request for review must be made within fifteen (15) days from the date of notification of the decision of the lower authority, or the expiration of the period for review. The governmental body shall review the matter in accordance with its procedures for review and in accordance with any administrative procedures governing procedures for the internal review of government actions. The central body shall render a decision within thirty (30) days of receipt.

Article 87: Right of appeal

If the petitioner is not satisfied by the decision of the central body with authority over land, he or she may refer the matter to the competent court of law. The procedures governing such review, including timelines, shall be as set forth by the court and any relevant laws of administrative procedure.

Section Two: Transitional and final provisions⁹⁴

Article 88: Validity of prior rights on Governmental private land

Unless the contrary is specifically provided for in this Order, any right, interest, title, power, or obligation lawfully agreed to, acquired, accrued, established, coming into force or exercisable in accordance with the laws prior to Law No. 43/2013 of 16/06/2013 governing land in Rwanda or this Order under either written law or custom in any private land of the State or other government body is hereby declared to be and to remain valid, effective and enforceable under the Law and this Order.

Article 89: Abrogation of contrary provisions

All previous regulations contrary to this Order are hereby repealed.

Article 90: Coming into force of this Order

This Order comes into force on the day of its publication in the Official Gazette of the Republic of Rwanda.

⁹³ This article provides for the right to administrative review and appeal to a judicial body. As noted above the process is essential to supporting the right of property granted in the Constitution, due process rights associated with the property right, and the accountability of government.

⁹⁴ These articles are retained from the 2008 Order. In some cases they may no longer be necessary and can be eliminated from the revised Order.

5.0 SUMMARY CHARTS

The following charts illustrate: 1) the authority of the various government bodies for various actions within the process for land allocation and leasing; and 2) the estimated time for the process of land allocation and negotiation for leases of land for projects.

5.1 Government of Rwanda Actors

| No. | Action | Lead GOR actor | Additional GOR actors | Possible current delegation to decentralized bodies? |
|-----|--|---|--|--|
| 1 | Inventory of land for allocation | Central body for land | | Yes |
| 2 | Categorization of available land as for 1) personal use; 2) project use; or 3) both/either | Central body for land | Central body for investment and development; central body for environment; central body for agriculture and other relevant sector bodies | No |
| 3 | Identify relevant government bodies with authority related to proposed land allocation and coordinate their exercise of authority and involvement in process | Central body for land | | No |
| 4 | Determine requirements for ESIA and community consultation | Central body for environment | | No |
| 5 | Publish notice of land allocation and application procedure | Central body for land | | No |
| 6 | Assist applicants for personal land through application process | Central body for land | | Yes |
| 7 | Assist applicants for project land through application process | Central body for investment and development | | Yes |

| | | | | |
|-----------|--|---|--|-----|
| 8 | Determine method for selection of applicant for personal land | Central body for land | | No |
| 9 | Determine method for selection of applicant for project land | Central body for investment and development | | No |
| 10 | Issue noncompetitive land allocation | Central body for land | | No |
| 11 | Conduct first cut of applicants for personal land | Central body for land | | Yes |
| 12 | Conduct first cut of applicants for project land | Central body for investment and development | | No |
| 13 | Notify applicants of qualification for public auction (personal and project land) | Central body for land | | No |
| 14 | Hold public auction (personal and project land) | Central body for land | | Yes |
| 15 | Conduct deliberation and decision-making (personal and project land) | Central body for land | Central body for investment and development; Central body for environment; local authorities | No |
| 16 | Notify successful and unsuccessful applicants of results of auction or decision-making | Central body for land | | No |
| 17 | Publish public notice of results of selection process | Central body for land | | No |
| 18 | Negotiate and execute lease with lessee of personal land | Central body for land | GOR body holding subject land in private domain | No |
| 19 | Grant provisional land allocation and MOU with lessee of project land | Central body for land | | No |
| 20 | Provide lessee of project land list of | Central body for land | Central body for investment and | No |

| | | | | |
|----|---|------------------------------|---|-----|
| | requirements for lease | | development; Central body for environment; other relevant sector bodies | |
| 21 | Facilitate any ESIA, permitting, and community consultation requirements for project land | Central body for environment | | Yes |
| 22 | Review Business Plan for project land and accept or request revisions | Central body for land | Central body for investment and development; Central body for environment; relevant sector bodies | No |
| 23 | Draft and negotiate emphyteutic lease for project land | Central body for land | Central body for investment and development; Central body for environment | No |
| 24 | Execute lease for project land | Central body for land | GOR body holding subject land in private domain | No |
| 25 | Monitor compliance with lease | Central body for land | | Yes |
| 26 | Monitor compliance with any ESIA and permit | Central body for environment | | Yes |

5.2 Timeline for Allocation of Land and Lease Execution for Project Land (upon receipt of applications)

| Step No. | Action | Actor | Estimated days required |
|----------|--|-----------------------------------|-------------------------------------|
| 1 | Review of applications for project land and initial cut for eligibility for public auction of deliberation and decision-making | Governmental body | 5 days from receipt |
| 2 | Selection of project promoter by auction or by deliberation and decision-making | Governmental body | 5 days |
| 3 | EIA and SIA conducted, as applicable | Successful applicant, overseen by | No set time limit, with requirement |

| | | | |
|---|--|--|--------------------------|
| | | governmental body | for evidence of progress |
| 4 | Negotiation with local community, as applicable | Successful applicant, local community, governmental body | |
| 5 | Business Plan with EIA mitigation, community plan, financial statement, timeline for execution, etc. submitted | Successful applicant | |
| 6 | Review and approval or requirement for revision of Business Plan | Governmental body | 5 days |
| 7 | Draft, negotiate, and execute lease | Governmental body and lessee | 5 days |
| Total days: 20 days, plus time required for any studies or consultations | | | |

6.0 CONCLUSION

The structure of the proposed Draft Order and the suggested timeframes are designed around a simple administrative structure that supports the rapid allocation of available land for commercial and non-commercial use. At least initially, the proposed administrative and governance structure is centralized in order to build experience while ensuring consistency, transparency and predictability in GOR approach. As experience and capacity grow, the process can be devolved to decentralized bodies, with central oversight.

An overarching goal of the structure of the Draft Order, and the other draft legislation prepared by the LAND Project, is to create a legal framework that supports a vision of Rwanda as a global leader in the management of its land for profitable, productive, and socially and environmentally responsible use. To that end, the structure permits rapid land allocation and lease issuance personal land. The structure is also designed attract prospective commercial lessees with elements such as rapid provisional land allocations and the possibility of prepared development models. One risk in efficient procedures is lack of meaningful attention to requirements such as development of plans to avoid or mitigate environmental damage, or consultation with local communities and development of plans to include communities in enterprise activities. As several countries have found, simply requiring developers and investors to prepare plans to address environmental issues, or to consult with communities, does not guarantee meaningful efforts. Those parts of business plans are often poorly researched, narrowly conceived, and lack reasonable plans for implementation. Through procedures proposed in this Draft Order, Rwanda may adopt a structure that attracts investors and helps them develop business plans that support profitable enterprises, while also ensuring social and environmental interests are meaningfully addressed.

The proposed next steps for RNRA with relation to the Draft Order, and with the support of the LAND Project, as desired, are as follows:

1. Decide the large, overarching issues presented in the Draft Order, including: a) the governance and administrative structure for land allocations and leasing; b) the roles of various government bodies; and c) how the government body will function (e.g., by internal working committee, other governance system)
2. Perform a provision-by provision review of the Draft Order. The review will include making the revisions to implement the decisions made in No.1 and identifying content that should be moved to instructions and procedures.
3. Create the derivative instruments.
4. Develop a proposed set of tools (application forms, contracts, checklists, timelines, etc.) to implement the Draft Order and accompanying instructions and procedures.